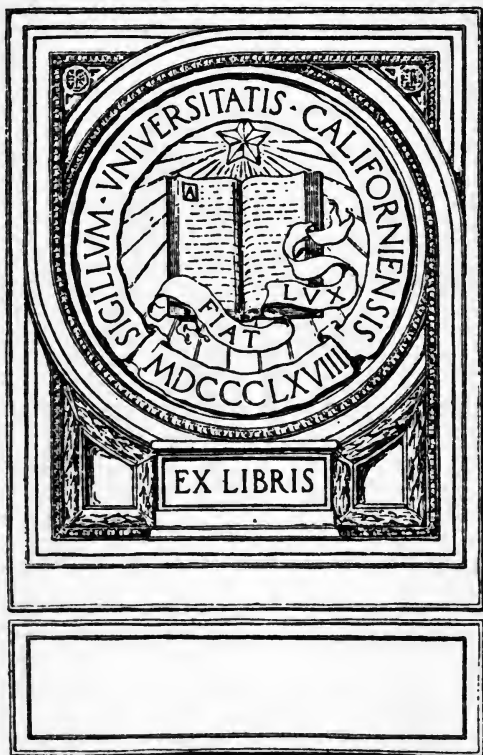
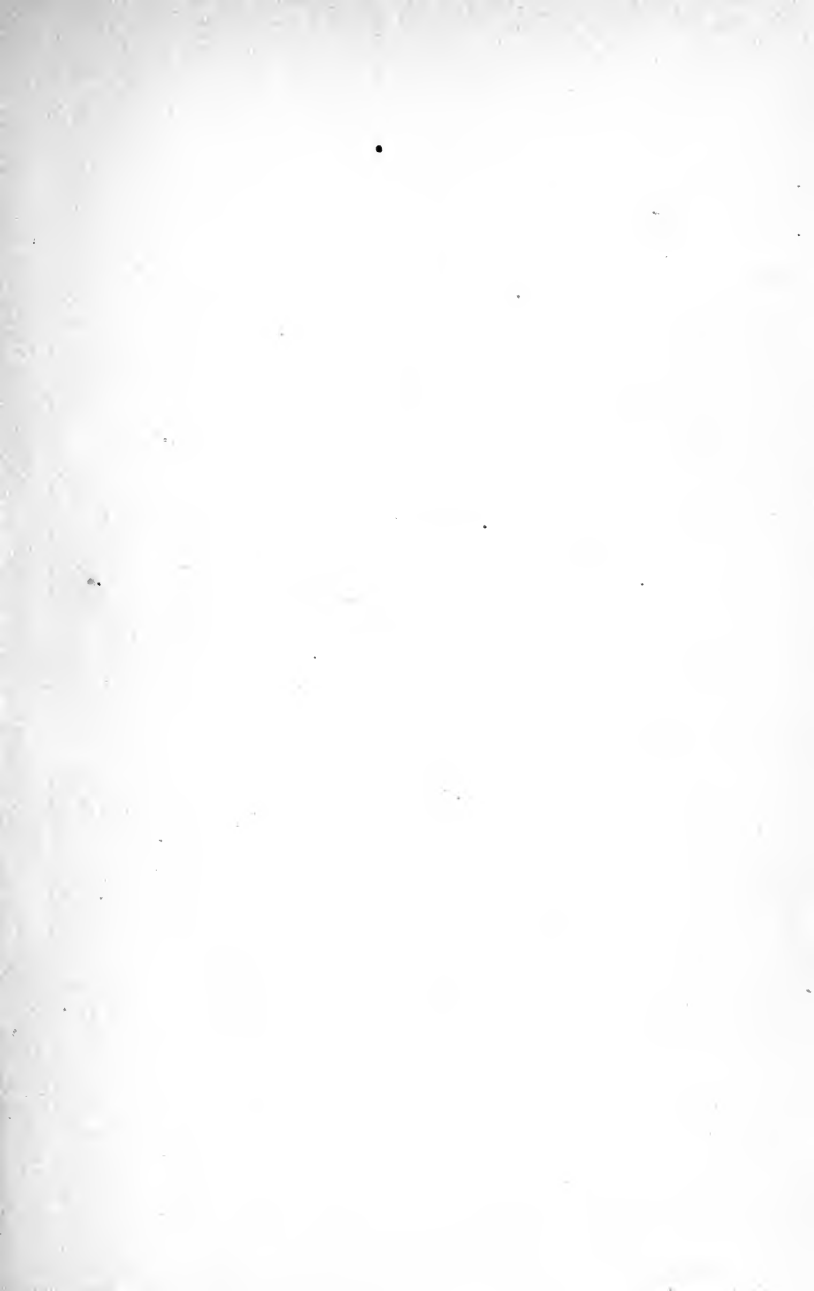


Bernard Moses

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THE RIGHTS AND DUTIES

OF

AMERICAN CITIZENSHIP

BY

WESTEL WOODBURY WILLOUGHBY, PH.D.

ASSOCIATE IN POLITICAL SCIENCE AT THE JOHNS HOPKINS UNIVERSITY

AUTHOR OF "THE NATURE OF THE STATE: A STUDY IN POLITICAL
PHILOSOPHY," "GOVERNMENT AND ADMINISTRATION IN THE
UNITED STATES," "THE SUPREME COURT: ITS
CONSTITUTIONAL RELATIONS," ETC.



NEW YORK ·· CINCINNATI ·· CHICAGO
AMERICAN BOOK COMPANY

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BERNARD MOSES

TO THE
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PREFACE

THE purpose of the present work is to present to American youths practical information as to the rights and duties which attach to American citizenship. In the effort to do this in the clearest and most logical form, the stereotyped method of giving a running commentary upon the Constitution has been discarded.

Of all political forms, the federal type is the most complex; and it is, therefore, little short of absurd to attempt, as do so many text-books on Civics, to explain to students who are without previous training the constitutional relations of our elaborate system of national, state, and local governments, without first giving to them a knowledge of the nature of political authority, the purposes for which it exists, and the general governmental means through which such purposes are attained. In the present work it is believed that this error has been avoided. The student is first given that information which is essential to an understanding of citizenship and government in general, before he is called upon to study the description of our own complex government in particular.

This book is therefore divided into two parts. The first is devoted to a general introduction to Political

Science ; the second, to a description of Civil Government in the United States.

Throughout, the effort has been to render the work thoroughly practical in character. Constant care has been taken to give the reasons as well as the justification for each power described, to introduce at every possible point a description of the practical problems involved and the solutions proposed for them, and to inculcate in every way the moral obligations of good citizenship. A knowledge of how one's government is organized and administered has everywhere been treated as a means and not an end, — a means through which the citizen may be enabled fully to appreciate the political problems by which he is surrounded, and inclined to lend his assistance to a proper solution of them. Guided by this principle, it is hoped that there has been produced a book which will both enable and predispose the student willingly to assume, and intelligently to meet, the responsibilities of American citizenship.

W. W. W.

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PART I

INTRODUCTION TO POLITICAL SCIENCE



CHAPTER I

SOCIETY

Introductory. — The world over, and since civilization began, men and women have preferred to associate with one another, rather than to live solitary and independent lives. The feeling which impels them to do this is termed the social sentiment, and because of its universality is considered to be natural to them. Controlled by this impulse, we find individuals at all times and in all places forming groups and communities of different kinds and sizes, within each of which the members feel themselves united by a special friendliness for one another. These groups or associations of men and women we term social units, and the living in them we term living in a state of society.

In examining these social units as they exist among different peoples, it is found that the more civilized their members are, the greater sociability they exhibit, and, consequently, the closer they draw together in their common relations. The closer they draw together, the more interests they have in common, and the more necessary it becomes that the selfish desires of individ-

uals should give way to, when they conflict with, the general interests of the community at large.

While, however, there is in human nature itself this social instinct which causes men to derive pleasure from a fellowship with one another, there are other elements equally natural, though not equally praiseworthy, which tend to counteract and render impossible the realization of this sentiment. These are the selfish instincts, which, if unrestrained, urge men to seek their own ends without reference to the welfare of others, and cause them to commit acts of violence against those who interfere in any way with their own desires.

Thus it is that the higher social feelings, which involve the elements of friendliness, sympathy, mutual aid, and self-restraint, are ever warring against the lower and selfish desires, which involve cruelty, hate, violence, and common misery. The perfect social condition is one in which proper desires — such as are beneficial to the individual and do not conflict with the common welfare — are permitted and protected, while all others are restrained and suppressed.

The absolute reign of the selfish instincts would lead almost immediately to common destruction. Every man's hand would be against his neighbor, universal suspicion and hatred would prevail, coöperation even in the simplest matters would be impossible, and continual warfare would result. That such a condition of life would be intolerable is apparent even to the most savage of races, and hence it is that no matter how far back we go in the history of the world, or how low we descend in the scale of civilization, we still find

men voluntarily grouping themselves into clans, tribes, and nations for the purpose of securing peace and coöperation among themselves and protection against outside enemies.

At first, in the very lowest stages of civilization, this idea of securing peace is almost the sole "social" or public aim sought by these associations, and even this aim is very imperfectly secured. Gradually, however, as men grow accustomed to living with one another, and as their ideas of right and wrong become more developed, not only are their sympathetic feelings intensified, each of them thus being made to feel more and more kindly disposed toward the others, but each sees that it is to his own individual advantage that peace should be maintained, and that other interests as well should be secured through their common or social effort.

Examples of such other interests are the protection of certain kinds of property, the making and enforcement of at least some general rules regarding hunting, the grazing of flocks, and the cultivation of land. Later, as civilization develops, one by one new needs are recognized and new duties laid upon society, until, as among the advanced nations of the present day, the number of interests which are regarded as of a social or general nature becomes almost countless.

The important point to be recognized in this connection is that the many benefits which a civilized social life confers upon us can be obtained only by the subordination, to some extent, of our individual desires to the general good. As a condition of, and in exchange for, the benefits which one derives from a civilized so-

cial life, not only should cheerful obedience be yielded to those social regulations which are necessary, but an active personal interest should be taken in public affairs. Aside from every consideration of sympathy and of religious duty to one's fellow men, it is but a fair return to society that each individual should make the common welfare an object always to be considered in his conduct. This he can do by obeying all laws, by faithfully performing his contracts, by refraining from violating those rights in others, which he thinks others should respect in him, and, if necessary, by actually participating in matters of public importance.

It is because of these duties that this book is written. The purpose of the following pages is to give such information as will enable the student to understand the actual problems upon which he is or will be called, as a member of society, to pass an intelligent opinion. The knowledge of how one's government is organized and operated is, therefore, not an end in itself. It is but the means whereby one becomes qualified to understand and assist in solving the problems that surround its practical and efficient operation. In truth, not only are those who are actually in the employ of a government its officials, but citizenship itself is an office. Every citizen owes it to himself, as well as to his fellow men, to render himself qualified to perform properly the duties which attach to such office.

The Family. — Aside from the largest society in which we live, — the state, — there are other and smaller social units. The smallest, most intimate, and most natural of all these smaller groups is the family.

Even among the most uncivilized and cruel of savages, — nay, even among the lower animals, — a certain community of interests and mutual sympathy exist between the parents and offspring. As civilization develops, these family groups among men still retain their existence, although surrounded by and incorporated in the larger social groups which are formed; and the bonds which unite their members become deeper, stronger, and broader. Not only is the family the first, the most abiding, and the most intimate of all social unions, but, in a very true sense, it is the most important. For it is not too much to say that without it none of the larger social groups, such as the tribe and the nation, could be successfully organized, or, if organized, successfully maintained.

The family is the school of all the virtues. Within its circle is first awakened the spirit of obedience, love, self-sacrifice, and proper ambition. If a man be a good husband or father or son, it is safe to say that he will be a good citizen. Investigations of the home conditions of criminals give overwhelming proof of the enormous influence which the family life has upon the careers of its members. It is, therefore, or should be, the first effort of the church, as well as of the state, zealously to guard against any influences which will tend to render family life less perfect. Hence we can see the importance of the question of divorce. It is not a matter wholly between husband and wife, but is one to be considered both in reference to the children, and to society at large. In these days it is generally recognized that in certain cases, at least, a dissolution of the

marriage tie should be permitted. But these cases should be so strictly defined and limited that the family tie shall not be loosened nor the marital bonds made so weak as to be easily severed at the whim or caprice of the parties united by them.

The Tribe and Nation. — Next to the family, in size, as well as in historical development, is the tribe.

This is the stage of social development attained by most of the savage races of to-day. The members of these groups, though often very numerous, in most cases believe themselves to be more or less closely related by blood, by adoption, or by marriage. In practically all cases they are of the same race. Tribal life is very well exhibited by the native Indian races of our own country.

The next stage of development brings us to the nation. By this term is designated a larger group of men who feel a greater sympathy and friendliness for one another than they do for others, and who therefore desire that they should constitute one people, and be united under one political control. Identity of race is usually the chief factor which gives rise to this feeling of nationality, but it is not always present. For example, the Swiss nation is composed of Germans, Frenchmen, and Italians; and, indeed, our own nation contains millions of individuals descended from different European races. Among other influences which co-operate with identity of race in creating a national feeling are, a common history glorified by common traditions and renown, sameness of religion, of customs, of language, and of commercial interests. All, or only

some, of these influences may be present, but the essential condition for the existence of a nation is the feeling among the people of a greater friendliness for one another than for outsiders, and a desire for a common united life under the same government. Whatever other conditions may exist, this feeling can prevail among a given people only when they have tastes and ideas sufficiently similar to allow them to coöperate with one another and to be in substantial agreement as to the character of political control which they desire.

Foreign Immigration. — In our own country the problem of immigration has a very serious significance in connection with this subject. We are glad to receive competent and honest immigrants, from whatever quarter they may come; but it is an evil to have landed upon our shores criminal and pauperized foreigners who have neither the capacity nor the disposition to conform to our ways of life and to our methods of government, and who therefore form an element of danger and discord in our midst. As we have already said, there is necessary for any social coöperation, a feeling of common sympathy and a willingness to contribute to the general welfare and to abide by the proper restraints which civilized life places upon individual license and violence. It is therefore of vital importance that we should not receive elements within our midst which will tend not only themselves to produce discord, but to corrupt the habits of our own people.

Already in our larger cities the foreign element constitutes the larger part of the population of the slums, and not only contributes largely to the crime and im-

morality of the country, but also corrupts our politics by providing a reservoir of votes which may be freely bought and sold by the unscrupulous politician. Not only does the existence of an improper foreign element corrupt politics, but it introduces undesirable features into our social and industrial life. Thus, for a single example, one of the chief objections raised in the West against the immigration of the Chinese is, that so low is their plane of life that they either deprive of work the American laborer who is accustomed to more of the decencies of life, or drive him by their competition to habits of life lower than those to which he is or should be willing to accustom himself.

The correction of immigration evils lies in the passage of stringent laws preventing the landing of any foreigners except those who, by their education, training, or the possession of a certain amount of wealth, give reasonable promise of becoming acceptable citizens. There is a very general belief that many of the foreign governments, if they do not actually assist, yet connive at the immigration to our shores of their criminal classes. It goes without saying that admission to our country should be refused to such foreigners. As regards the corruption of our politics, the most feasible correction by law is to make the right of voting dependent either upon a certain educational or a property qualification, or both, and to require a much longer residence in this country than is now usually demanded. Such laws would have been enacted long ago but for the fact that every political party, when in power, is so anxious to keep or to increase its votes, that it is unwilling

to pass any law that will antagonize its foreign constituents.

Another fact which in some parts of our country gives rise to serious problems in connection with our nationality, is the existence of our negro population. The presence of this large negro element in the South is a fact which cannot now be altered, and which must be dealt with as best it may. In this, as in the case of other foreign elements already in our midst, the most efficient corrective undoubtedly lies in providing proper educational facilities.

It is not to be understood, it is repeated, that the presence among us of foreign-born subjects is in itself objectionable, for among such are to be found many of our very best citizens. What has been said in regard to the evils of unrestricted immigration applies solely to certain of the lower classes. The coming to us of the better classes of foreigners is a source of increase in our wealth as a people and in our power as a nation.

CHAPTER II

THE STATE

Definition. — In our last chapter we spoke primarily of social units, and the social life of communities. We have now to speak of political bodies and political life. It is common to distinguish between the conception of men as politically organized, that is, as constituting what is called a body politic, and of the same community of men as forming merely a group of individuals united by mutual industrial and social interests. A body of men so united, we term, as we have already learned, a society. Now, in order that the various social interests and aims may be protected and advanced, it is necessary that a certain organization shall be created, and certain officials appointed who shall be recognized by all to have the authority and the right to issue commands that may be enforced. Such an organization we term a government; the officials who administer it we term a magistracy; and the society in which such organization has been instituted we term a state or body politic.

The state, or body politic, is thus the social body *plus* the political organization. It is society viewed from the politically organized standpoint. The command which the public or political body utters is

termed law, and the provisions by which the extent of the authority of government is determined and the manner in which such authority is to be exercised are collectively termed the constitution.

The essential elements of a state are, therefore :

1. A community of people socially and politically united.

2. A political machinery termed a government and administered by a body of officials termed a magistracy.

3. A body of rules or maxims, written (as in the United States) or unwritten (as in England), determining the scope of the public authority and the manner of its exercise.

Individually, we term the members of a state its citizens or subjects. Collectively, they are called the people. Government and state are frequently used as synonymous terms. They have, however, quite different meanings. By government is designated, as we have seen, the organization of the state, the machinery through which its purposes are formulated and executed. Thus a state may, at different times of its history, have different forms of government, and still remain the same state. In fact, all states are continually changing their forms of governmental organization in order to meet the new duties which a developing life imposes on them.

The Rightfulness of the State's Authority. — The rightfulness of the authority of the state is denied by those who term themselves Anarchists; but their attitude is both incorrect and inconsistent. The ground upon which they base their denial of the justice of the

control exercised over them by the political authority is that they have a natural right to freedom. That is, they allege that they have a natural right to do as they please, unhindered by others. But if this were so, no man would have any security of person or property, or even a ground upon which to base a claim for security from interference by others. If every one had the right to do as he pleased, what right would any one have to object to another's interference with his freedom, if the other wished to interfere?

It is, therefore, only the existence of a supreme political authority with the right to fix general rules of conduct which can be enforced upon all, that enables any one to say that he shall not be controlled as to this or that matter by any one else; that he shall be protected from theft and personal violence; and that he shall have the right to demand the performance of agreements which others have made with him. Thus the state, so far from destroying freedom, is indispensable for the existence of any freedom. All that nature gives to man is brute strength, and in a "state of nature," that is, where there is no state, all that he could enjoy would be that which he would be able to obtain either by his physical strength or by persuasion from others. Some governmental control is, therefore, an absolute necessity if there is to be any civilization whatever. But to just what extent this control shall go, beyond the mere prevention of crime and violence, is a question which we shall consider in another chapter, which will be devoted to a description of the duties of government.

Origin of the State. — Concerning the absolute historical origin of political authority among men, history does not afford definite information, for the fact is that the first subjection of man to some rude sort of political control was almost necessarily coeval with the beginnings of his social life, and this carries us back to periods of human development earlier than those concerning which we have any historical information. With the association of man with his kind, arise by necessity common or social interests. These interests not being in all cases identical with individual interests, and selfishness being a universal trait of mankind, there arose early in the history of society the necessity for some means whereby the common welfare might be protected.

Patriotism. — In addition to the task of preserving internal order there existed also, from the beginning, the need of maintaining the freedom of each political group from control and interference by other groups; in short, the necessity for the creation of means for common defense and offense in war. With social life, and, to some extent, the existence of common possessions, there naturally arises in the mind of each individual, even in the very earliest stages of political development, a feeling of interest in the welfare and continued existence of the particular social and political unit of which he is a member.

This feeling, which is termed patriotism, becomes, or should become, stronger and stronger as the higher stages of a civilized life are reached. It is this sentiment which, grounded as it is upon the consciousness on the part of the citizens of the state that they consti-

tute one people, makes them feel that in all that relates to their public political life they have the same interests, and that each and every one of them may justly feel proud of the achievements which they as a whole have made in the past. It is this sentiment which should make every one ready to spring to the defense of his own state when it is threatened by any outside force, and willing to assist when its prosperity is in danger from evils or corruptions from within.

Development of the State. — We may conceive of tribes of men without any fixed abode as politically organized, if they yield an habitual obedience to some recognized chief. As soon, however, as they become settled upon definite areas of land, the territorial element becomes an essential part of their life. The state then becomes a people politically organized in a particular territory, and the bonds of kinship and tribal relations become strengthened by geographical unity. With the cultivation of land the duties of government necessarily widen. With the growth of private property and the increase of industrial pursuits and manufactures, the necessity for protection and regulation on the part of the state is correspondingly increased.

Thus by equal steps, as civilization increases, social interests become greater, and, by necessity, the governing powers more elaborately organized and endowed with more extensive authority. Together with this increasing complexity of social and political relations comes an increasing definiteness. That is, the powers of government which are at first vague and indefinite both as to extent and manner of exercise, become

strictly determined, and their scope and exercise more and more regulated by customs that have crystallized into fixed rules, — rules which, as we have learned, are collectively termed a constitution, and which, in these days, are usually reduced to writing and formally adopted by the people with great solemnity.

For purposes of illustration we may compare the development of animal life with that of political institutions. The naturalist tells us that the lowest orders of living beings consist of mere specks of almost structureless matter, which they term protoplasm, and in which the most powerful microscope is scarcely able to discover that one part differs from another. But, as we rise in the scale of animal life, the organism becomes more and more definitely and delicately constructed, and its intelligence and self-consciousness greater and greater, until at last we come to the highest of all living beings, — man himself. At the same time that this elaboration of structure has proceeded, varying influences and conditions of life have caused individuals to differ from one another until the number of classes, genera, and species has grown to be almost innumerable.

The development of political society is characterized by the same features. With the advance of civilization, come increased social needs and activities. The governmental organization of the state becomes a more complex structure, and is endowed with wider, and, at the same time, more definite powers. Also the exercise of these powers becomes more intelligently controlled, and, in a sense, self-directed, that is, dictated

rather by the interests of the state itself than by the personal interests of the individuals to whom the exercise of the state's powers happens to be intrusted. Likewise states, which in their early stages have substantial similarity of governmental organization, assume in the course of their development, diverging forms. Geographic, ethnic, economic, and moral conditions all have their influence in determining the direction in which the development of political forms shall proceed. Distinctions arise as to the number of interests to be regulated by the state, as to whether the people shall generally participate either actively or by way of popular control in the administration of their public affairs, and as to the manner in which the powers of the state shall be distributed among its several departments. Thus arise all varieties of government, from the despotic oriental state to the democracy of the Swiss communes. Within each of these classes are also to be found members distinguished from one another by the greatest variety of internal organizations. These different forms will be considered in a later chapter.

Citizenship. — The people living under any government may be divided into two classes — citizens or subjects, and aliens. Citizen and subject are synonymous terms, though it is more usual among us to give the former name to one who lives under a free or republican form of government, like our own, and to reserve the latter term for one under the authority of a king or monarch.

A citizen or subject is a member of the body politic, owes an obedience to its government, and enjoys the

full protection of its laws, and such rights of holding office and of voting as its constitution allows.

An alien is a subject or citizen of a foreign state, residing in another state, where he is held to obedience to the laws, but enjoys only such rights as the state in which he resides sees fit to grant to him, as, for example, the right to acquire and own land, to vote, to hold office, etc.

Judge Cooley, the eminent writer upon American Constitutional Law, states the distinction between an American citizen and an alien as follows: "A citizen, in the full acceptation of that term, may be said to be a member of the civil state, entitled to all its privileges. The principal differences between an alien and a citizen consist in these: the former when he resides in the country is there by sufferance only; he cannot own real estate therein, and he cannot exercise political rights. But these differences do not always exist. The states of the Union recognize fully the rights of aliens to reside within their limits without hindrance, and in many states they are permitted freely to hold, convey, and transmit to their descendants real estate. No less than twelve of the states also permit aliens, after a short residence therein, and after declaring their intention to become citizens, to exercise the elective franchise. When an alien is thus given the privilege permanently to reside within a state, and to hold property of all kinds therein, and to exercise the privilege of suffrage, the distinction in right and privilege and immunity between him and the citizen is not very plain." We may add to this, that though the respective rights

and privileges of the two, under such a condition, are practically the same, there is this distinction, that in the case of the citizen such rights and privileges belong to him without express enactment, from the mere fact of his citizenship; while those of the alien belong to him only when special laws have been passed to that effect.

Naturalization. — An alien, by conforming to certain conditions laid down by the United States law, may become a citizen. This process of becoming a citizen is termed naturalization. There are thus two classes of citizens — those of native birth, and naturalized aliens. The Fourteenth Amendment to the United States Constitution declares that: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." This includes all persons, colored and white alike, and excludes those Indians who still belong to tribes which maintain a semi-independent character, and yield obedience to tribal chiefs.

The requirements for naturalization, as fixed by Congress, are as follows:

1. Five years' residence in the United States and one year's residence in the state where naturalization is sought.
 2. Two years' preliminary declaration of an intention to become a citizen.
 3. An oath to support the Constitution.
 4. Renunciation of all foreign titles or orders of nobility.
 5. Abjuration of allegiance to any foreign power.
- No alien can be naturalized if his native government

is, at the time, at war with the United States. Naturalization makes an alien a citizen not only of the United States, but of the state or territory in which he is admitted. It does not, however, necessarily give him the right to vote. That depends upon the law of the particular state. Children of aliens who become naturalized, if they live in the United States, and are under twenty-one years of age when their parents take the oath of citizenship, become citizens by virtue of the naturalization of their parents. Also, children born to United States citizens while temporarily living in foreign countries are held to be native-born citizens when they return to live in this country. The Constitution provides that the President shall be a native-born citizen of the United States.

Citizenship may be lost by becoming naturalized in a foreign country or by desertion from military or naval service.

CHAPTER III

SUFFRAGE

Suffrage a Privilege, not a Right. — There is a disposition on the part of many, especially in this country, to demand that the suffrage, or power of voting, be given to every citizen as a natural right, irrespective of his qualification to use it properly. No claim could be less warranted. The suffrage is a privilege, not a natural or inherent right. It is a reward for merit or capacity, not a power to be unconditionally demanded. The citizen is endowed with the privilege of voting, and thereby of participating in the determination of the policies of government and the selection of the officials who shall transact it, in order that by its exercise the good of the state may be maintained. It is, therefore, for the state itself to determine by its laws, when, and by whom, and under what conditions, this power shall be used. As one writer has forcibly said: "The pretension that every man has the necessary qualifications of a citizen simply because he was born twenty-one years ago, is as much as to say that labor, merit, virtue, character, and experience are to count for nothing."

As a matter of fact, we do, in this country for the most part, give the suffrage to all adult male citizens, but this is because, upon the whole, they are

deemed qualified to possess it, and because, thereby, all have been given a direct interest in public affairs. But it is believed by many that we have been too precipitate in thus extending the suffrage. Certainly this is true in those states in which aliens who have not yet become citizens have been given the right to vote. As regards the granting of the privilege to the negro population irrespective of capacity, this would seem also to be a mistake.

Woman Suffrage. — In a few states the right to vote has been given to women as well as to men, and there is a demand of considerable strength that this right be everywhere accorded them. For the most part, the advocates of woman suffrage demand it as a right. But this, as we have seen, is not a proper claim. If the right be granted at all, it should depend upon whether the women are properly qualified to use it, and whether, if granted, a new element will be introduced in our political life, which, upon the whole, when considered in all its relation to family life, to property considerations, to purity of elections, etc., will tend to promote the general welfare of the community. When this does satisfactorily appear, woman suffrage should be granted. The women will then be justified in demanding it as a "right."

As a matter of fact, very few women as yet desire the privilege of voting. Aside from this, the great objections which are made to giving the privilege are: *First*, The introduction of woman into practical politics will necessarily bring her into contact with rough elements which will tend to destroy her feminine delicacy and charm. *Second*, In so far as politics distract her

attention from her other duties, they will tend to lessen her attention and devotion to her family and home duties. *Third*, In the majority of cases, giving women the right to vote will be tantamount to giving extra votes to their husbands or fathers, in accordance with whose wills most of them will be inclined to exercise their right; or, when they are not guided by the wishes of their husbands or other male relatives, inevitable dissension will be introduced into the family life where all should be harmonious. *Fourth*, It is maintained that, because most women are not engaged actively in business and public life, they would not have that practical training and knowledge which would enable them to cast their votes intelligently. This last objection has least application in reference to voting upon such local affairs as education, local option, etc., and, in fact, in reference to these matters, it may be asked whether women have not often more knowledge and interest than men.

To the above arguments against the expediency of woman suffrage, it may be added that to the true wife and mother it is unnecessary. Though the men have the vote, the women have the first training of the men, and should have a life-long influence over them. And if this opportunity and power be properly exercised, the men will be predisposed to exercise the suffrage wisely and justly. As Professor Vincent, the founder and head of the Chautauqua movement, has recently said: "Woman now makes man what he is. She controls him as a babe, boy, manly son, brother, lover, husband, father. Her influence is enormous. If she use it wisely, she needs no additional power. If she abuse

her opportunity, she deserves no additional responsibility. Woman can, through the votes of men, have every right to which she is entitled. All she has, man has gladly given her. It is his glory to represent her. To rob him of this right is to weaken both."

The privilege of being considered eligible to public office depends upon the same principles as does the suffrage, with only this difference, that, just as the proper performance of the duties of governmental officials, especially of the higher ones, is more difficult than voting, so it is but reasonable that the qualifications for appointment or election to the different offices should be proportionately increased.

Exercise of the Suffrage a Duty. — It scarcely needs be repeated that the exercise of the suffrage is a duty which should not be neglected through indifference or self-interest. It is morally obligatory upon the citizen, when elections occur, to go to the polls, and there vote honestly and according to his own independent judgment. Ordinary business engagements are no sufficient excuse, and it is cowardly to refuse to vote in order to avoid giving offense to a party. But far worse than not to vote at all, is it to vote under some selfish or corrupt influence. One of the greatest curses of present American politics, is corruption and intimidation at the polls. Fortunately, however, there is good reason to believe that this evil is decreasing. There are two agencies which are bringing this about. One of these is the gradual development of a higher sense of public honesty and morality. The other is the introduction of an improved method of voting termed the Australian system.

The Australian Ballot. — The Australian ballot, which has now been introduced into the majority of our states, differs in minor details in the different states, but in general its features are as follows: The ballots used are all prepared and printed by the state. All of the names of the candidates are printed on one ticket, and the voter is instructed to make cross marks (X) opposite the names of those for whom he desires to vote. This prevents the voters from being misled, as is often done by the distribution of incorrect and misleading tickets, whereby, through technical mistakes, their votes are sometimes cast out or counted for others than those intended. The Australian ballots can be obtained only at the polls and in a particular room, from which they cannot be taken for any purpose. Each person upon going to the polls is given one of these tickets, and retires by himself into a room or voting booth, where he prepares the ticket as he desires, and deposits it. His name is then checked off on the list of registered voters of his precinct.

Absolute secrecy is thus obtained, and perfect independence is made possible; and, what is still more important, the purchase and sale of votes is greatly discouraged, for a man dishonest enough to sell his vote cannot be trusted to vote, without being watched, according to his agreement. Thus politicians hesitate to bribe voters, when they have no means of knowing that they will fulfill their part of the contract.

This independence in voting is of special value to employees, who might desire to vote a ticket different from that approved by their employers, and yet might

be deterred from so doing through fear of losing their places, should their manner of voting be ascertained by their employers.

Corrupt Practices Acts. — Another vast improvement which can be made in the honesty and purity of elections is in the enactment of what are called "Corrupt Practices Acts," such as have been passed in England and in a few of our own states. These are laws which not only provide very severe penalties for bribery of any sort, direct or indirect, pecuniary or otherwise, but which require that all candidates shall, within a few days after election day, publish a sworn statement giving an itemized account of all moneys contributed or expended by them directly, or indirectly, to any other person, in aid of their election. Thus, a man who is guilty of the corrupt use of money in furthering his election, cannot, without perjury, avoid the publication of his guilt, and the consequent penalties which the law provides for such corrupt expenditures, as well as the contempt of every good citizen. These "Corrupt Practices Acts" usually contain, also, provisions forbidding, under severe penalties, the attempt of employers to influence by threats or rewards the votes of their employees.

In almost all cases, whatever the system of voting, it is required that a person shall be registered as a qualified voter prior to election day. Registration books are kept for this purpose in all voting precincts, in which a citizen may have his name entered, upon proving his residenceship, proper qualifications, etc. In some places the prior payment of a small poll or capitation

tax, that is, a fixed sum for each individual, is made a requirement for registration. After depositing his vote, the name of each citizen is checked upon the registration book of the precinct, and thus voting more than once, or "repeating," as it is called, is prevented. Votes have to be cast in person, and great care must be taken that absent voters, or deceased persons, are not impersonated by others.

In a few cases, ingenious voting machines have been used which register automatically each vote as cast, and thus prevent not only the depositing of more than one ballot, but keep tally of the number of votes cast, and prevent both fraud and delay in the counting of the votes at the close of the election day.

CHAPTER IV

INTERNATIONAL RELATIONS

International Law. — The ordinary laws which a state enacts for the control of its own citizens are termed municipal laws, and necessarily have no force beyond the limits of its own territory, except in so far as other states, for reasons of convenience or friendship, see fit to apply them. Ambassadors and other international representatives are universally held exempt from the laws of the country in which they reside, and bound only by the laws of their own governments. Also, many contracts made in foreign countries or in reference to property situated in foreign countries and many commercial matters are regulated by foreign law. It is universally held that ships of war, wherever they are, and merchant ships upon the high seas, are under the laws of their home government. But except in the above cases, the courts of a given country apply only the law of its own government, and such law has no force beyond the limits of that country.

The relations of states to each other are regulated by general principles founded upon custom, upon treaties, and upon dictates of reason, humanity, and utility. These rules, though not laws in the strict sense of being formally and definitely declared by the law-

making body of a particular power, and having tribunals for their interpretation and enforcement, are nevertheless in most cases capable of precise statement, and are, as a rule, as faithfully followed as are the domestic or municipal laws of the individual states. Principles of morality, justice, and convenience in general operate to induce a willing obedience on the part of states in this respect, and where they fail, the fear of war waged by the aggrieved states acts as a compelling force.

The subject of International Law is one of increasing importance; for whereas in early times it was the custom of states and of citizens of different states to have as little to do with one other as possible, the spread of modern ideas of a common brotherhood of all mankind, and the increased facility for communication and transportation afforded by the telegraph, the railroad, and steamships, have tended everywhere to increase intercourse, and to create industrial, commercial, and financial interests which are common to several or to all nations. The international trade of our own, as well as of other countries, has risen to enormous proportions. No country now produces all the commodities which are consumed by it, and some countries make no pretense of raising more than a small part of the food necessary for the sustenance of their own populations, but depend wholly upon international trade to secure the balance.

At all times there are thousands of American citizens traveling or temporarily residing in foreign countries all over the globe, and on the other hand there are

constantly within our midst thousands of subjects of foreign powers. These conditions give rise to a multitude of disputes between different states. For it is one of the most valuable and sacred rights of a citizen that he may demand protection from his home government when abroad, in case the government of the state in which he is does not accord him protection against personal violence, or secure him justice in the property relations into which he has entered either with the state or with its citizens. Though one state cannot dictate to another what privileges shall be granted to its citizens, it is recognized to have the international right to insist that the state in which its citizens are resident shall accord to them the same protection against violence to person and property that it gives to its own citizens, and that the same means of legal redress in its courts shall be open to them. Thus, if one of our citizens thinks himself denied justice, or injured as to any property rights by the government of the state in which he is traveling or living, or if he is imprisoned without conviction for crime, after a fair and impartial trial in which he has had proper means of defending himself, or if he or his property is injured by acts of private individuals which the local government might have prevented had it used the proper degree of energy and caution,—in any of the above instances and in others too numerous to mention, an American citizen can appeal to his own state for redress or protection, and, if his complaint be properly substantiated, our government will undertake to secure him his due rights even at the cost of war if necessary.

In the same way, our government owes rights to all aliens residing within its limits.

Aside from the protection of its citizens when abroad, and the control of international trade and commerce, every state has the recognized sovereign right to protect its territory from invasion, and to determine without interference from outside what form of government it will establish and maintain, and in general to govern its own citizens as it sees fit.

The last statement, however, holds true only within reasonable limits. According to the doctrine held by civilized nations of the present time, intervention on their part is justified when it has for its purpose the prevention of extreme oppression of foreign subjects by their own governments. It was mainly upon this humanitarian ground that the United States undertook to release the Cubans from the control of Spain.

Repeating, then, what we have already said, we may state the objects of international law as threefold:

“1. It determines national boundaries and other national prerogatives.

“2. It defines and maintains the commercial rights of persons engaged in international trade.

“3. It settles the privileges of the subject of each state when abroad, and points out the way in which these privileges are to be defended.” (Wharton.)

In general, the good sense and feelings of justice of the several states secure the substantial enforcement of international rights without resort to force. When, however, all pacific means of settlement are exhausted and war is declared, again international law steps in

and reduces the struggle to a definite and orderly contest, and seeks to minimize its evil results. Neutral states, that is, those not engaged in the war, receive definite rights as to the safety of their subjects and the protection of their commerce. On the other hand, they are required to abstain from giving assistance to any of the combatants.

Within the theater of war, definite provisions are made for determining just what property shall be liable to seizure and destruction or confiscation. As to the actual operation of war, international law seeks, as has been said, to render the combat as little destructive to life, and as little productive of suffering, as need be. It therefore requires that the aim shall be to cripple and weaken the enemy rather than to destroy him. For this reason all civilized nations agree that those kinds of shot and shell which needlessly lacerate the persons struck by them shall not be used. The use of poison is also prohibited. Irregular fighting, that is, killing by persons not members of a regular army, is forbidden. Whenever possible, enemies are taken prisoners rather than killed, and when captured are humanely treated. Non-combatants are protected from injury. Finally, all ambulances and military hospitals are declared to be inviolate from attack so long as any sick or wounded remain therein.

Arbitration. — One of the most efficient means of preventing war with all its resulting horrors, and one which is being more and more resorted to in modern times, is arbitration; that is, the appointment of arbitrators by the nations between whom a controversy has

arisen, which cannot be settled through the ordinary diplomatic channels. These representatives of the nations respectively interested meet together, usually select from some disinterested state an impartial president, investigate fully all the facts, discuss among themselves their weight, and, as a result, render a decision which they believe to be justified by the rights in the case. Opportunity is thus given not only for a full and fair consideration of all facts and rights concerned, but, what is just as important, time for sober second thought, without which nations may in moments of sudden irritation and passion be unnecessarily plunged into struggles disastrous to all concerned. Not the least important of the duties of every good citizen, therefore, is to use his influence toward the maintenance of peace whenever such peace is consistent with true national honor and morality.

The Diplomatic Service. — For the purpose of communication with foreign governments, and for the convenience of having resident representatives who can keep their home governments informed regarding all that occurs of international importance, and who may be easily appealed to by any citizen who has suffered, or is threatened with, violence or injustice at the hands of a foreign power or its subjects, every state maintains a diplomatic service, which consists of ambassadors, ministers, and agents of different degrees of rank and power who reside at foreign capitals and perform the duties just enumerated. Such international or diplomatic representatives have a peculiar sanctity in that, as has been already indicated, they are held to be in

no wise amenable to the law of the land in which they are stationed, but may be punished for crime or other misdeeds only by their home government. They have a high social dignity such as befits the representatives of a sovereign state, and any affront to them, even of a purely social nature, is immediately resented by the people and the governments which they represent.

Consular Service. — In addition to the diplomatic service, every state maintains a consular service for the sake of protecting and advancing its international commercial interests. At every foreign port where its trade is of any considerable amount, a consular agent is stationed whose duty it is to do everything possible to assist his fellow citizens in their trade operations, to grant them proper clearance papers, to solemnize marriages, to administer oaths in necessary cases, to take charge of the effects of stranded vessels, to administer estates of citizens dying within their consulates, to discharge seamen, provide for destitute seamen, reclaim deserters, etc. They also have the important duty of sending reports to their home governments as to matters of general commercial interest.

In barbarous and semi-barbarous states, consuls are often charged with judicial functions, that is, authority for the determination of disputes in which their countrymen are interested. This right is founded upon the assumption that there do not exist in the country in which they are located, courts in which substantial justice to foreigners can be obtained.

CHAPTER V

GOVERNMENT

Its Functions. — We have already defined government as the machinery through which the functions of the state are performed. These functions we may classify in two ways. First, according to their character, into legislative, executive, and judicial; and second, according to the necessity of their performance by the state, into essential and non-essential.

Legislative, Judicial, and Executive Functions. — The general purpose of the state is to provide some supreme authority, which shall exercise an oversight and control over all matters that pertain to the general welfare, which shall restrain, when necessary, particular acts of the individual, and which shall be able to provide a sufficient armed force to prevent interference and invasion by outside nations. In order to perform these duties, a state has first of all to declare certain general rules of conduct called laws, which all are required to obey. This is called the legislative authority. Next, it is absolutely necessary in all states that there should be created organs for the interpretation of laws and for their specific application to individual cases whenever there arises any controversy as to their applicability. This is the function performed by the courts, and is

termed the judicial function. When the laws explicitly forbid certain acts, and attach penalties to their performance, such acts are termed crimes or misdemeanors, the laws forbidding them are termed criminal laws, and the persons violating them are tried in the criminal courts. When the laws have reference to other matters, such as property, contract, commerce, etc., they are termed civil laws, and are interpreted and applied in civil courts.

Finally, there is required in every state a variety of organs through which the laws which have been declared by the legislative bodies, and interpreted and applied, when necessary, by the courts or judicial bodies, are actually carried into execution. This function is termed the executive function, and the organs and officers through which the great variety of the duties of the state are finally enforced and performed, are termed executive organs of the government.

Of course, in the vast majority of instances, the commands uttered by the law-making body are immediately put into execution by the executive officials. The intervention of the courts is necessary only in those cases where there is a doubt as to the meaning of the law, or where its provisions have been or are alleged to have been violated, and recompense or enforcement is demanded by the ones who claim to have been injured by such violation; or where a crime or misdemeanor has been committed, and the criminal courts are called upon to fix the penalty therefor.

Later on, when we come to consider our own government, we shall treat its legislative, judicial, and execu-

tive duties and organs in separate chapters, and it will then be necessary to remember the meanings we have just given to these terms.

Essential Duties. — We turn now to the second classification of governmental duties; namely, to that based upon the degree of the necessity for their exercise by the state. Among the various functions of government there are many, the performance of which by the state is so obviously necessary for its very existence as an independent political power, that no question concerning the expediency of their exercise is possible. These are called the essential functions. It is thus admitted by all except anarchists, that every state, whatever its form of government, should possess sufficient power and authority to maintain its existence against foreign interference, to provide the means whereby its national life may be preserved and developed, and to procure internal order, including the protection of life, liberty, and property. An eminent writer in political science, Professor Woodrow Wilson, has classified these duties under the following heads:

1. The keeping of order and providing for the protection of persons and property from violence and robbery.
2. The fixing of the legal relation between man and wife, and between parents and children.
3. The regulation of the holding, transmission, and interchange of property, and determination of its liabilities for debt or for crime.
4. The determination of contract rights between individuals.

5. The definition and punishment of crime.
6. The administration of justice in civil causes.
7. The determination of the political duties, privileges, and relations of citizens.
8. Dealings of the state with foreign powers; the preservation of the state from external danger or encroachment, and the advancement of its intellectual interests.

The extent to which the state is obliged to go in the control of these essential matters depends largely upon the character of the people governed, and their state of civilization. In some cases it may be necessary for the state to fix absolutely, as far as possible, all the details in these matters. In other cases the most general rules may suffice, and the people may safely be left voluntarily to settle these matters among themselves, without the coercion and interference of the state. Just to the extent to which the people are themselves disposed to pay their just debts, to abide by their contracts, to refrain from crime, and generally to treat one another justly and properly, the intervention of law is not needed.

In early times the quantity of government is much more important than its quality. That which is wanted is a comprehensive rule binding men together and making them act in accordance with some definite law of conduct. What this rule is does not matter so much. A good rule is better than a bad one, but any rule is better than none. Thus, when civilization has not advanced far, the urgent necessity for public control of some sort leaves but little room for the freedom of the individual,—a freedom which, indeed, the individual

has not yet learned to desire, or properly to use. In this stage the variety of powers exercised by the state is not, in actual practice, so great, but the rules which define the scope and manner of exercise of the public authority are so general and indefinite that in almost no direction does the individual possess any certain guaranty against state interference.

As civilization advances, however, not only does the orderly habit of the people increase, but their moral qualities become more developed. The distinction between right and wrong is more clearly recognized, and the principles of justice are more frequently followed without reference to the sanction of the state; the feeling of self-dependence arises; the desire for a certain latitude of action uncontrolled by the powers of the state comes into being; and thus, by degrees, the arbitrary and extensive control of the state becomes irksome. Thus arises a struggle between authority and liberty—a struggle that has continued and will probably continue throughout history.

This struggle, it is to be remarked, is of a twofold nature: *First*, to secure to the individual a certain field in which he shall be free to act as he will without interference either from the political power or from private individuals. *Second*, to establish general rules according to which the functions that are given to government shall be exercised; that is, to substitute for the arbitrary and uncertain action a more or less certain and uniform regulation of public affairs. Neither one of these aims is necessarily bound up in the other, and each is separately obtainable.

We thus distinguish between political freedom, which is the power of the people themselves to determine what form of government shall be established, and what shall be its power; and individual freedom, or the security derived from the law whereby one is protected by the government from the violence of other individuals. The one is freedom to control government; the other, freedom from private interference guaranteed by the government. The former refers to the extent to which the people participate generally in the management of the state, or at least dictate the manner in which its powers shall be exercised. The latter has to do with the extent to which private rights of life, liberty, and property are secured.

As has been said, there is no necessary connection between political and individual freedom. Where political freedom exists to any considerable extent, we term the government a popular government; where it does not exist, we term the government absolute or autocratic. But it is just as possible to find individual freedom in the latter case as in the former. Under the Roman Empire there was little political freedom, yet individual rights were, as a rule, ample and well protected. On the other hand, among the early Germanic tribes which controlled most of Europe after the fall of Rome, there existed much more political freedom, with much less protection of private rights. So, also, in our own day, it is not found that individual rights are any more ample or better protected in popular governments, and, in some instances not so well, as in those governments in which the people do not participate so directly or so

fully in the control of public affairs. From the very nature of the case it is just as easy for a popular government as for any other to go to extremes in controlling in detail the private actions of the individual, and thus in diminishing his individual freedom.

Law and Liberty.—It might possibly seem, from what has been said, that individual or civic freedom and regulation by law are so opposed to each other that the extension of the one is the corresponding limitation of the other. But this is true only to a certain extent.

If the state had no authority whatever, it would cease to exist, and there would then be no means whereby the commands of the law could be enforced. In fact, no legal code of conduct could be said to exist. It is only when the state lays down and enforces general rules of conduct, that the individual is protected in the exercise of that freedom of action that is left to him. Public laws are necessarily of a general character, and within the limits that they set, a field of activity is created within which the freedom of the individual is protected. Thus laws regulating the holding and transference of property defend the people in the possession of their wealth and in its free use and consumption. General laws regulating contract provide the individual with a protection under which he may enter into contractual relations with his neighbors, with the assurance of having his rights protected. Penal laws and their enforcement protect both the life and the property of the person, without which freedom would be either impossible or worthless. The sum of the rights thus

secured to men through the state constitutes their civic freedom, and all that any one can demand is that the governmental authority be exercised in as general a manner and to as small an extent as is compatible with the capacity of the people for the proper exercise of the freedom of action that is thereby reserved to them.

But this is just the point. Upon what general principles is the line to be drawn between public control for the public good, and individual freedom for individual good? This brings us to the consideration of the non-essential duties of the state.

Non-essential Functions. — The functions included under this head embrace in general those duties performed by the state in the regulation of the economic, industrial, and moral interests of the people. They are those activities which are assumed by the state, not because their exercise is absolutely essential to the state's existence, but because it is supposed that their public regulation or control will be advantageous to the people as a whole. They are duties which, if left in private hands, would either not be performed at all or would be poorly performed. Within this field it becomes important to determine such questions as the following: Shall the state regulate trade and industry, and to what extent? Shall the coinage of money and the control of banking be given to it? Shall it own and manage the railroads, the telegraph, and telephone lines, or the canals? Shall education be provided at public expense? Shall the employment of women and children in the factories and mines be regulated by law? To what extent shall the government seek to secure

good sanitation by providing public sewers, forbidding excessive hours of labor, establishing quarantines, compelling the use of appliances for the prevention of accidents, etc.? Shall the state provide for the care of the poor and of the insane? Shall it restrain the sale and consumption of intoxicating liquors? Shall it provide lighthouses? Shall it seek to encourage home industries by means of high tariff duties? Shall the cities own their own street railways, their markets, their water, gas, and electric supplies, their telephones, or water fronts; or shall these be left under the control of private individuals or corporations?

These, and a multitude of other questions, are constantly arising for determination within this general field of non-essential duties. The characteristic point in them all, however, is that, as already said, the state's existence as an independent political body and enforcer of law is not dependent upon their exercise. It is optional whether or not they shall be assumed, and the way is thus open for the widest difference of opinion as to whether or not this or that particular function shall be undertaken. According to the weight given to the various arguments for and against state action, the widest divergency of views is possible.

It would seem reasonable to hold that, inasmuch as all government exists only for the good of the people, the determination of the powers it should assume should be based wholly upon the ground of expediency, and that its action should not be limited in any direction in which the real good of the people would be attained thereby. When, however, we state that these questions

are to be determined wholly by expediency, warning must be given against the mistake of looking only to immediate and apparent benefits to be derived from state action, and disregarding ultimate results which may be thoroughly dangerous and harmful. There is always the greatest danger that this error will be made, and that state action will be demanded which, though leading to temporary advantage or benefit in one direction, will be injurious in another, or will establish an unfortunate precedent or have a bad educational influence upon the people. The following considerations should always be borne in mind in determining whether or not a given activity or control shall be assumed by the government.

Conditions Justifying Governmental Action. — In a state of expanding civilization it is impossible, and inadvisable, even were it possible, for a government to stand still without change or development. New conditions give rise to new needs. Regulation by the state, which once may have been necessary, may thus become unnecessary and harmful; and, on the other hand, that which has before been safely left to private performance may afterwards require state control. As the morality of the people increases, the need for the exercise of the punitive powers of the state becomes less, punishments for crime may be made less severe, and the necessity for large standing armies becomes less imperative. On the other hand, the need for increased control by the state in industrial matters becomes greater. As industrial and commercial life develops and increases in importance and complexity, the social interests—those

affecting the people in general—become more numerous and important, so that in regard to these matters both justice and utility demand that individual interests be subordinated to the general welfare of the community.

We may illustrate this by a few examples. As long as manufacturing was carried on by hand at the homes of the workingmen, there was little or no need of intervention by the state, either for the purposes of regulation or control. When, however, steam was introduced as a motive power, which led to the production of commodities on a large scale in enormous factories, in which many men, women, and children were grouped together for the operation of intricate machines, it became a matter of public necessity that the state should intervene to see that the operatives were not overworked, that they were surrounded by proper sanitary conditions, and that devices for protection against accidents were employed. So, also, in regard to transportation. As long as this was by means of wagons and stage coaches, there did not appear to be much need of public regulation, but now that the railroads have, by their wonderful development, become a very necessity to our modern industrial and social life, it is everywhere recognized that they should be subjected to a certain amount of public regulation; and in some quarters the demand has become urgent that their actual ownership and operation should be placed in the hands of the state. Finally, the development of large cities has given rise to a very large number of new conditions which are of public rather than of purely private concern. Espe-

cially is this so in respect to sanitation (including sewerage, inspection of food, abating of nuisances, and isolation of contagious diseases), lighting, water supply, rapid transit, telephones, markets, wharves, police service, street paving and cleaning, fire departments, public parks, building regulations, licensing of certain trades, maintenance of hospitals, control of public meetings, etc.

Possibly the most recent example of the transformation of a private matter to one of public concern is seen in the development of gigantic "trusts." These are enormous corporations which absolutely control the production of certain commodities, and thus remove them from the healthy influence of competition, with a result that those interested are able to charge excessive prices for the goods produced. In this way the manufacture of these articles has ceased to be a matter of purely private concern, and has become one of public interest, and, therefore, one which the state may properly regulate.

The first lesson, then, which we must learn is, that change is not to be resisted merely because it is change. Growth is necessary to a healthy political life, and change is therefore to be resisted only upon positive logical grounds of inappropriateness to the end desired.

Secondly, as was implied in what was said in regard to trusts, the intervention of the state in industrial matters, either for purposes of control or ownership, can be justified, as a rule, only in those cases where the industries, when in private hands, are not properly influenced and controlled by competition. Self-interest is

a universal principle in human nature ; the tendency, therefore, is for the individual to look rather to his own good and advantage than to the welfare of his neighbor. When, however, there are a number of persons competing with one another for trade, no one of them can ask an excessive price for the commodity which he has to sell, for to do so would but result in driving his customers to his cheaper rivals. Furthermore, in the keen struggle for custom, each manufacturer will have every inducement to use the most economical means of production possible, in order that he may be able to undersell his competitors. He will thus be led to avoid unnecessary waste, and be eager to introduce new and improved methods and machinery. In this way industrial invention will constantly be encouraged, and the economic condition of society as a whole will be advanced.

When this healthy competition is not present, none of these beneficial results are secured, and the public will be forced to pay an excessive price for the commodities produced. Other things being equal, it would seem that in such instances it would be for the general good for the government itself to assume ownership or powers of regulation. The general circumstances under which monopolies arise are when the producers are so few that they can combine and fix an arbitrary price; or where the commodities produced or the services rendered are of such a character, or the manufacturing plants occupy such peculiarly favored spots or lines of land, that no successful outside competition is possible. The most important examples of these so-

called "natural monopolies" are seen in the production and distribution of water, gas, and electricity, the maintenance of railways, street-car lines, telephone systems, markets, wharves, etc. In all of these cases the existence of two or more systems is absolutely unnecessary, and, therefore, if established, an unnecessary expense to society. Thus, under ordinary circumstances, one line of street-cars upon a given thoroughfare is all that is needed; two systems of water or gas supply lead to unnecessary tearing up of the streets for the purpose of laying the pipes, and give no better service than would a single system. A monopoly, therefore, seems not only necessary, but desirable, in all such cases, and hence there would seem to be the strongest reason why the state or city should itself be the owner and producer, and thus give to the people at large either very cheap service, or return to them the profits to be derived from such enterprises.

Another general class of cases in which the intervention of the authority of the state is justified, is where there is competition under improper conditions. Beneficial competition is possible only where the contestants are of comparatively equal strength. Where there is not this comparative equality, a contest really means not competition with its resulting benefits, but simply the destruction or the degradation of the weaker party. This condition of affairs is conspicuously exhibited in the relations between factory owners and their employees. Here, in many cases, so many are the men, women, and children who are seeking employment, and so absolutely necessary is it that they should

obtain work, that they are forced to take it even though it be surrounded by the most obnoxious conditions. When this is so, the state should step in with its regulative control to require, for example, proper ventilation, lighting, plumbing, and the use of accident-preventing devices, to fix a maximum length of the day's work, for women and children at least, and to limit the age at which the latter shall be employed, or even absolutely to prohibit their employment in certain arduous or dangerous trades. In such cases the state intervenes not to own, but simply to regulate, the given industry; and the result is not a check to competition, but rather a raising of the level upon which it is to be conducted.

Another class of circumstances under which the intervention of the state may be beneficial, is where the action of a few selfish individuals may compel all other members of their profession to adopt undesirable methods. Instances of this are seen when one or two members of a certain trade insist upon keeping their establishments open on Sunday, and thereby force all others to do the same if they wish to retain their share of the trade. The result is that all have to work an extra day each week, and yet the sum total of custom which they receive is not increased a dollar's worth. In such cases a law forbidding Sunday trade would regulate and improve the condition of the given business without in any way destroying competition.

Another class of activities in which the agency of the state seems to be beneficial is in the regulation of matters in which those who are the most interested are the least able to see the necessity of regulation. This is

most obvious in matters of compulsory education, sanitation, and the like, where it is the most ignorant people who most need knowledge and who are most likely to suffer insanitary conditions to arise and prevail, and yet who are the very least qualified to judge of the value of knowledge, or of the harmfulness of insanitary conditions.

Finally, there are many services for the promotion of the happiness and welfare of a people which, if not performed by the state, would not be performed at all. As a rule, these are services educational in character rather than coercive, directive rather than controlling. Under this head come such matters as the provision of public libraries and reading rooms, public baths, parks, boards of health, and, probably the most important of all, the collection and diffusion in published reports of information which may be of value to the people. Of this last sort is the work performed by the United States Departments of Labor and Agriculture, by the Bureau of Education, the Fish Commission, the Coast and Geodetic Survey, and by the National Census which is made every ten years. In many of our states, also, there exist similar departments and bureaus for the performance of similar work. All of the results obtained by the investigations carried on by these departments are published, and, in general, distributed free of cost to the public.

It has been estimated that in this way there is given to the public by the federal government, scientific information equivalent in amount to a daily publication of 120 pages. Of the immense value of this work, taken

as a whole, there can be no question, and its comparative cost is very slight. Not only are public officials and legislators thus furnished with information upon which to base intelligent and wise action, but the people themselves are provided with useful knowledge.

Take, for instance, the work of the United States Department of Agriculture. In this department, among other duties, the habits of injurious insects and birds are investigated, and the best means for their destruction are determined; the causes and remedies for diseases which afflict live stock are studied, and measures taken for their prevention and eradication. In this way, for example, the once very destructive contagious disease among live stock, pleuro-pneumonia, has been almost eliminated from the United States.

This department publishes monthly and annual statistics of the condition and prices of crops, and thus the farmer is assisted in disposing of his produce in the most advantageous manner possible. For the introduction of improved methods of agriculture, experiment stations have been established in almost every state, and the best qualities of seeds have been tested, and, to a very considerable extent, distributed gratuitously among the farmers. In one of the reports it is stated that, as a result of a single frost warning contained in one of the weather crop bulletins issued by the department, over one hundred and twenty-five thousand dollars worth of the cranberry crop of a single state was saved through the adoption of precautionary measures which such warning rendered possible.

All such duties as the above are in no wise socialistic,

since, from their very nature, they are not likely to be performed or even possible of performance by private parties; and thus their exercise by the state does not limit the field for private enterprise.

To the above classes of optional functions of the state, that of the control of certain matters based upon the idea of directly increasing morality may possibly be added. Here the state enters upon very dangerous ground, however, its action being justifiable or expedient in very few cases. Experience has proven that, in general, the control of immoral habits which do not involve the commission of crime can best be left to the individual conscience and the restraint of public opinion.

In the control of the manufacture, sale, and consumption of intoxicating liquors, many motives enter. Aside from the revenue to be derived from the taxation of these liquors, the idea of lessening a very great source of crime, poverty, and disease is prominent, but usually there is present also the motive of restraining drinking as an immoral practice. Other examples of the regulative control of the state in matters such as these are in laws prohibiting improper exhibitions, obscene pictures or speech, etc.

However, even after it has been decided that this or that function shall be performed by the state, there still remain the problems of determining how it shall be performed, what sort of an organ or office shall be created for its performance, and whether it shall be performed by the central or a local government. These are questions of practical statesmanship, regarding which few general rules can be laid down. Concerning the

division of duties between central and local governments, we shall speak later on.

Objections to Governmental Action. — Thus far we have been speaking of those duties concerning which, under favorable circumstances, the activity of the state would seem to be useful. We have now to speak of those negative considerations which have always to be remembered, — those facts which tend to make governmental action unsatisfactory and harmful.

In the first place, and most important of all, the performance by the state of any act which can possibly be performed by private enterprise, has a most undesirable influence in lessening the spirit of individual self-help and initiative. It renders the people just to that extent accustomed to look to the government for aid, rather than to seek it in their own energy and enterprise. It is one of the things of which we Americans are justly proud that we have, as a nation, to a high degree, a spirit of individual self-help which makes us disinclined to seek assistance outside of ourselves. We should never lessen this habit or characteristic, and should always oppose resort to governmental agency except in relation to those matters enumerated above, and only then when the necessity seems especially urgent.

With advancing civilization inevitably comes increased complexity of social relations, and hence a constant necessity for the increase of the state's activities in certain directions. But together with this tendency come other forces which will render less necessary a resort to this agency. With increasing civilization will come a higher morality, a broader altruism, and a wider

intellectual horizon. These are the forces which may be depended upon for the correction of imperfect conditions, as they arise, without the intervention of the state. The more enlightened the people are, morally and intellectually, the more inclined and more able will they become to depend upon their individual and voluntary powers for the regulation of their own affairs, and the less likely will they be to tolerate a régime through which a broad field of freedom of individual action is not secured. Their intellectual advancement will enable them to discover the means in very many cases to correct abuses without calling in the assistance of the state; and increased morality will render possible the practical operation of these means.

A second general objection to state action is the fact that it is impossible to obtain from governmental agencies that economy of administration, and from its officials that sense of individual responsibility and energy which personal interest and ambition alone can give. When a business is conducted, or a work carried on, by private parties, both their individual reputations and capital are involved; while in the case of public officials, the cost is not borne by them except to an infinitesimal degree, they do not derive personal benefit from small economies, and, except as they are actuated by a high sense of public duty, they have no vital interest in the success of the undertaking beyond merely doing well enough to retain office. Other things being equal, therefore, private management is both more efficient and more economical than state management, except where the work to be done is of such magnitude or requires such a long

period of time for completion, that it will be difficult or impossible to obtain private capital for the purpose.

Thirdly, there is the danger of political corruption. Where politics are as corrupt as they are in many places in the United States, especially in the larger cities, there is a constant danger that any extension of the duties of the state will result only in providing more offices for distribution as political spoil to incapable, if not dishonest, officials.

Fourthly, and finally, there is to be pointed out the fundamental objection to any species of legislation on the part of the state which results in a violation of individual rights of property or the freedom of contracts, or their sanctity when made. These rights constitute the very basis of our ideas of justice, as well as the foundation upon which all industrial and commercial prosperity and development have been erected. They are rights, therefore, not lightly to be disturbed.

In our day, and in this country, there are constantly being proposed measures which, for the sake of bettering the conditions of some, would deprive others of their property or interfere with their freedom to make and enforce fulfillment of such contracts as they see fit to make. In a democratic state, that is, in one in which the suffrage and the right to hold office are widely extended, there is a constant demand on the part of the masses for any state action that seems to offer the slightest promise of relieving the condition of the poor. In many cases these demands are perfectly justifiable; but when they are based on the principle of taking property from one class to give it to another, only the

most urgent need can justify them either morally or economically. By rendering property rights less secure, thrift and saving are discouraged, and, ultimately, society as a whole is rendered so much poorer. No state, and a democratic state least of all, can be successfully conducted without a general reverence for law, and this reverence cannot be preserved if law be made the instrument of injustice, and caused to violate the very rights which it should aim to create and maintain. As President John Quincy Adams once said, "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny begin."

Socialism and Communism.—The term socialism is used to describe that form of political society in which the duties of the state are so enormously extended as to include the ownership and operation of all land, machinery, and other instruments of production. The Standard Dictionary defines the term as follows: "A theory of civil polity that aims to secure the reconstruction of society, increase of wealth, and a more equal distribution of the products of labor through the public collective ownership of land and capital (as distinguished from property), and the public collective management of all industries." Under such a régime, private personal property would still exist, but no individual ownership of land, or manufacturing plants. The objections to such a scheme are many and decisive, but cannot be stated here at length. In general they are the same, moral as well as economic, as those we have just alleged

against any governmental action, though, when applied to such an extreme extent, their force is so enhanced that to the minds of most persons they are absolutely overwhelming.

Communism is the name for the still more radical scheme, according to which all property, land, machinery, other instruments of production and private goods as well, are owned in common; and in which all individuals are rewarded alike for their work, irrespective of capacity; it is, in fact, a scheme for the abolition of all private property. In general, communistic schemes call for the destruction of the family and of the church as well.

CHAPTER VI

FORMS OF GOVERNMENTS

Introductory. — To the student nothing is more interesting and instructive than to trace how, as tribes and nations have progressed in civilization, government has advanced in its development; how, — as men have progressed, first from the condition of savage hunters to that of roving feeders of flocks, then to tillers of the soil with fixed places of abode, and, finally, to builders of cities teeming with trade, commerce, and manufactures — their mutual duties and common interests have become more and more important and numerous, and government, as controlling these interests and duties, has developed in form and improved in structure until it has become an all-powerful, complex machine, controlling in many ways the actions and lives of its citizens. For thousands of years, governments have been developing and changing in form and functions, and a very large part of the history of the nations of the globe is identified with the history of the development and changes of their governments. As new conditions and needs have arisen, governments have adapted themselves to them. In some cases this has been done peacefully, as in England, and in others, violently, by revolutionary means, as in France. In some cases,

functions previously exercised have been relinquished, in others, new powers have been assumed; but in the majority of cases, the change has been merely in the manner of exercising this or that power.

All peoples have not the same characteristics, nor have they developed under the same conditions of climate, soil, or situation. Different nations have, therefore, developed for themselves different forms of government. Yet these governments, however different in their structures and administration, are in all cases distinctly referable to four well-defined types, known by the following names: monarchy, aristocracy, democracy, and republic.

Monarchy. — A monarchy is a nation at whose head is a personal ruler, called king, emperor, czar, etc., who has control of the government, appoints the principal officers of state, and to whom, in theory at least, these appointees are responsible for their actions. Thus England, Germany, Spain, Italy, Sweden, and others are monarchies. The sovereign holds his position for life, and usually acquires his throne by inheritance. The amount of power actually exercised, and the responsibility borne by the sovereign, vary widely in different countries, and upon the basis of these differences monarchical forms of government are classified under the two heads, absolute and limited.

Absolute Monarchy. — An absolute monarchy is one in which the sovereign or ruler is possessed of supreme power and authority, and controls absolutely, without limitation or interference, all the powers of the government. His word is law, and does not require the sanc-

tion of the people. His commands are absolute, and do not require the formality of judicial procedure, and are not necessarily in conformity with existing laws. Implicit obedience to his commands, however arbitrary, may be demanded, and there is no appeal. These are, theoretically, the powers of the absolute monarch. Practically, however, he is constrained to keep within fair bounds of justice and good policy, lest his subjects be goaded to rebellion and revolution. The absolute form of monarchy exists to-day in Russia and Turkey.

Limited Monarchy.—A limited monarchy is one in which the ruler, though at the head of the government, is not absolute, but is limited in his powers by the action of a body of men, selected by the people, who make the laws by which the nation is to be governed. The respective rights and powers of the sovereign and of the lawmaking body, are determined by a collection of rules, written or unwritten, collectively known as the constitution. The constitution contains the fundamental law of the land. All acts of the government, to be valid, must be constitutional; that is to say, in conformity with the rules laid down in the constitution. For this reason, limited monarchies are known also by the name of constitutional monarchies.

England is the most conspicuous example of a limited or constitutional monarchy. In view of our former connection with her, and the extent to which we have derived our ideas of government from her political institutions, it will be of great assistance to us to consider her government, before proceeding to a study of our own.

The sovereign of England is termed King or Queen. Originally possessed of almost absolute power, the English ruler, at the present day, possesses very little actual power and influence, much less, in fact, than the people of the United States have entrusted to their President. The constitutional history of England is largely the narrative of the successive steps by which the people have wrested from royal hands and taken under their own control, the powers of government.

The rights of the English people in the participation of their own government are not contained in a written document, such as we possess in our Constitution, but rest upon established custom and precedent, and various charters wrested from their kings.

The English Parliament, or, to speak more exactly, the lower branch of the Parliament, called the House of Commons, rules the English people. The Parliament, or lawmaking branch of the English government, is divided into two houses, — the House of Lords and the House of Commons. The House of Lords is, as its name denotes, composed mainly of members of the noble families of England, who owe their seats in that body to the chance of birth. Theoretically possessed of powers of legislation equal to those exercised by the lower and larger branch (the Commons), the Lords have in reality but a small voice in the control of public affairs.

The House of Commons is composed of members elected by the people. In this body reside almost all the powers of government. Its acts require the assent of the House of Lords and of the King, but this assent is

almost wholly formal, and seldom refused. The sphere of legislation allowed the English Parliament is unlimited, differing in this respect fundamentally from our Congress, which is limited in its legislative field by the Constitution. From the English Parliament is selected the "Cabinet," consisting of the principal executive officials, who guide the legislature, and at the same time conduct the executive affairs of the nation. The chief of these, termed Prime Minister, is appointed by the King from the party in the majority in the House of Commons. He in turn selects the remaining members of that Cabinet. These are responsible to that body for all their actions, and retain their offices only so long as they retain the confidence and good-will of the Commons.

Aristocracy. — An aristocracy is a government in the hands of a select few, called the aristocracy. There are to-day no aristocratic governments proper, though many nations exhibit aristocratic tendencies. In nearly all of the European countries, one branch, at least, of the legislatures is composed of members holding their seats on account of noble birth, thus admitting the aristocratic element.

Democracy. — A pure democracy is a government in which all the people rule directly, meeting in popular assemblies in which is determined by the votes of the majority how the government is to be administered. This political form is obviously possible only in very small communities. Several of the Grecian states once governed themselves after this manner. No perfect example of a nation with this form of control can be said

to exist at the present time. The nearest approach to it is found in certain cantons of Switzerland. The Roman historian, Tacitus, tells us that the early Germans governed themselves in a purely democratic manner, and the first governments of several of our American colonies were of the democratic type. When we come to the study of local governments in the United States, we shall see also that the democratic form is followed in the New England town meetings.

Republic. — Two terms which are frequently used as synonymous with democracy are republic and popular government. Strictly speaking, however, a republic, or, as it is often termed, a democratic-republic, is a democracy adapted to the government of a large nation by the introduction of the representative principle.

Under this form of control the people rule themselves, not directly as in a pure democracy, but through agents or representatives of their own selection. The participation of the people in a republic consists merely in the choice of officers to represent them and to carry out their wishes. Hence this political form is also termed a representative government, or representative democracy.

It is to be observed that the principle of representation of the people by elective officers may exist in other than republican governments. For example, in all of the limited monarchies of Europe at least a portion of the members of the lawmaking bodies are elected by the people. But that which distinguishes the republic from all other forms is that the chief executive and *all* of the members of the legislature are elected, and

all other governmental officers hold their positions by appointment by these, for limited periods of time, and not by virtue of birth or other right.

Popular Government. — Popular government, like representative government, does not designate a form distinct from monarchy, aristocracy, and democracy, but is the term used to describe a form of political control in which the people as a whole have a considerable influence in the direction of political affairs. Thus a given government is more or less “popular,” according to the degree to which, to use President Lincoln’s famous phrase, “government of the people, by the people and for the people” is realized. Thus arises the distinction between free and despotic governments, the former indicating one in which the will of the people controls their rulers; the latter, one in which those in power may direct their action with but little reference to the wishes or welfare of their subjects.

A republic or a democracy is a popular government, but the popular element may be very pronounced in monarchies as well, as, for example, in England. In that country, as has been said, though the nominal executive head, the King or Queen, gains the right to the throne practically through hereditary descent, and the members of one of the branches of the legislature, the House of Lords, rest their right to membership, for the most part, upon birth, yet, as a matter of fact, all the real governing power is in the hands of the House of Commons, the members of which are elected by the people.

In all of the civilized states of the world popular

government has made great strides during the nineteenth century, but nowhere has this movement advanced further (Switzerland possibly excepted) than in our own country. Here all the chief public officials are not only elected by the people, but their terms of office are made so short, that, in order to retain their positions, it is necessary for them constantly to bear in mind the wishes of the people. By controlling the election of public officials, it is also easy for the people to dictate what public policies shall be pursued. This they can do simply by nominating and electing only those persons who are known to favor the measures desired. Thus, at almost every point, the will of the people in the United States is finally the real directive force in the state. It is well, therefore, to consider some of the peculiarly grave duties and responsibilities which this form of government throws upon its officials and upon its citizens. Many of these duties, together with the corresponding problems to which they give rise, will be mentioned in connection with the description of the government of the United States which will be given in Part II of this book. But here we wish to speak simply of a few general matters.

First of all there is to be emphasized the vital necessity which exists under a popular government for a wide diffusion both of knowledge and of honesty among the people. The decisive point in the success of a government such as ours, necessarily lies in the quality of its voting citizens. Of what use is it to devise perfect governmental forms and methods of procedure, if their functions and aims are not properly directed, and

if those who are selected to operate them are not honest and intellectually qualified for the task? This necessity for enlightenment and honesty among the masses arises from several facts. In the first place, it is the people who ultimately control the destinies of the state, and it is by them and from their midst that they who exercise the public functions are chosen. In the second place, a popular government is a form of government much more complex and difficult of administration than is one in which the political power is largely concentrated in the hands of a few persons or of a single individual, and, therefore, aside from all other considerations, the practical problems to be met and solved by a popular government are especially numerous and peculiarly difficult. How numerous and how difficult they are will partially appear from the following pages of this book. Forewarned is forearmed, and thus a knowledge of what the dangers and defects of our government are, will be valuable as a preparation for American citizenship.

A second observation to be made of all popular governments in general is, that they need for their successful operation a substantial social and economic equality. Popular government necessarily means government by parties, and the existence of great inequalities of wealth and social standing is sure to lead to unjust class legislation. It may not be the duty of the state directly to increase the equal distribution of property, but it may properly abolish all artificial distinctions of rank and privilege. All persons should be equal in point of law; the burdens of taxation should be justly dis-

tributed; the same opportunities for advancement should be offered to all; and, indirectly, the state may, by certain kinds of legislation, render it easier for those who are without much means to compete with their more fortunate fellow men for a share in the good things of this world. But certainly, above all, it behooves the lawmaker in a democracy to refuse his assent to any measure which will tend to increase inequality.

In the third place, a popular government is especially apt to be led into ill-advised socialistic extensions of its functions. Since the masses represent power, and the poor and incapable constitute a considerable portion of them, there is a constant pressure brought to bear upon the government to undertake some measure for their betterment.

Still another difficulty against which the popularly organized government has especially to contend, is that while it, more than any other political form, needs for its successful operation an exact and rigid enforcement of the law, there is a constant timidity on the part of its officials, that arises from the fear of displeasing the people, their master. In cases of riots and popular disturbances generally, in which the law of the land is violated, there is thus always a greater difficulty in securing prompt and decisive action for the complete enforcement of law in a popular state, than there is in obtaining similar action from a more absolutely organized political power. Whether or not in the present state of society the lower classes have secured to them by the law their full share of justice, it is earnestly maintained that nowhere is it more essential than in the

democratic state that there should be an exact and complete enforcement of the law, whatever it may be. If the law be out of date or in any way obviously unjust, nothing will more surely secure its repeal than the odium that will attach to it from its rigid enforcement. But as long as it is law, it should be treated as such. A tolerated violation of it will inevitably weaken the law-abiding sentiment of the community, and it is hardly possible to conceive of a case in which the immediate benefit to be derived from the disregard of a legal rule will not be far outweighed by the ultimate disadvantages that would follow. The law-abiding habit of the Anglo-Saxon race has been its greatest glory, and to that feeling alone is due the success that it has achieved in its various homes in the establishment and maintenance of democratic government.

Hence arises a vital necessity in a popular government for an intelligent and, above all, independent judiciary; that is, for a judiciary independent not only of the legislative and executive branches, but of popular influences and control. The tendency apparent during recent years in various of the states of the United States to render their judiciaries elective in character, whereby they have been deprived of the former independence which had been secured to them by fixed salaries and life terms or long terms of office, is one that cannot be too strongly deprecated.

The foregoing considerations show us that for the successful establishment and maintenance of democratic government there is necessary a disposition on the part of the people not only to refuse submission to a re-

straint that is arbitrary and oppressive, but likewise a willingness to yield to self-control. They must be able to draw the distinction between public liberty and private license, between manly self-dependence and individual lawlessness.

It is not to be thought from what we have said that popular or democratic government is inferior to other forms. On the contrary, despite its difficulties and defects, which it is essential that we should know, in order to avoid or correct them when possible, government by the people stands, as a whole, the first of all forms in point of excellence. Its essential features of superiority lie: first, in the guaranty that the wishes of the people at large will be consulted and considered; and secondly, in the educational influence which such a form of government necessarily exercises.

In the more absolute forms of government there is afforded neither encouragement nor reason for the interest of the general mass of the people in public affairs, and hence for the formation of intelligent opinions regarding public administration; nor are there provided means for its effective expression, if formulated. Indeed, if the autocratic government be tyrannical as well, it is to the interest of the government that the formation of an enlightened public opinion should be positively discouraged and prevented. In popular governments, on the other hand, not only are the means provided for, and encouragement given to, a wide public interest in political matters, but the very enjoyment of political privileges by the people furnishes a most efficient means for their still greater education. Lastly,

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the manly self-control which democracy teaches, stamps it as the best type of political order that advancing civilization has thus far disclosed. Popular government is one which presupposes a high morality, an advanced state of education, a great degree of self-control, a considerable amount of material and social equality, and, above all, the active and disinterested participation of the wisest and best of its citizens in its political life. When these conditions are obtained, it contains within itself the greatest possibilities of beneficent action, and the highest hopes of human progress.

Constitutional Government. — Those general principles upon which a government rests, which determine what legislative, executive, and judicial organs shall exist, by what persons they shall be filled, what shall be their respective powers, and in what manner such powers shall be exercised, — such principles, taken collectively, are termed the state's constitution.

In the above sense every state has a constitution, and its government is therefore a constitutional one. But in the strictest and most usual meaning which is given to the term, constitutional government means that form of government in which those who have the exercise of the political authority are definitely limited by well-established laws as to the extent of their authority and the manner of its exercise, and thus the people are protected against arbitrary and oppressive conduct on the part of their rulers. In general, these constitutional principles are reduced to formal written statements and embodied in a single document, but this is not absolutely necessary. England, for instance, is a

constitutional monarchy without a written constitution.

The essence of constitutional government is, then, the strict legal accountability of public officials for the manner in which their public authority is exercised. According to this, no private individual can have a legal cause of complaint against any government official for any act which such official may commit in the performance of the duties or the exercise of the rights given him by law. But the moment such an official steps beyond these limits, he becomes personally responsible for anything which he may do. If it be an act of violence, he may be punished as a criminal; if it be an injury to one's property, he may be held pecuniarily liable for it. In most of the countries of Europe, complaints against public officials are tried in special courts termed administrative courts; but in England, and in our own country, it is our pride to say that all persons, government officials and private individuals alike, are tried by the same courts and by the same law.

In former times, indefiniteness of authority, and irresponsibility of those in power for the manner in which their duties were performed, were the rule in almost all states. Between the governing and the governed an unbridged chasm existed, and an apparent as well as an actual conflict of interests. The government was not considered as an organ of the state, to be used for the good of the whole people, but as an instrument for the advancement of the interests and ambitions of those to whose hands its administration chanced to be

committed. Such a condition as this could persist only in the absence of popular enlightenment.

With the spread of popular education there began, therefore, an increased demand on the part of the people for rights of participation in their own governments, and for some guaranties that their interests would be considered in the exercise of the political power. When these demands were not granted by those in power, violent revolutions resulted, such as that in France at the close of the eighteenth century. At the present day, either through such revolutions, or through timely concessions by rulers, the principle of legal responsibility of those in power for all public acts, and the exact determination of the scope of their respective powers, has everywhere gained the day among civilized nations. In fact, the progress of popular and constitutional government has gone hand in hand, for the recognition by the people of their natural and reasonable right to determine their own political destinies has resulted first, in their demanding a right to participate in government either directly, or indirectly, by electing representatives, which has led to popular government; second, in a fixing of definite limits to the authority of public officials, whether elected or otherwise, which has led to constitutional, or, as it is often otherwise termed, responsible government.

Checks and Balances in Government. — One might think that when once the principle was established and put into practice, that government is but the instrument of the state, and that its powers are to be exercised directly or indirectly by the people generally, and in

their own behalf, then the struggle for good government would be successfully ended. But this is not so. Paradoxical as it may seem, the people need to be protected almost as much against themselves and their own representatives as against irresponsible rulers.

It is found by experience that it is a natural tendency and desire of those in power to extend their authority to its utmost limit, and that if too much authority be given to any one official, he will be able either to use his power corruptly and oppressively without danger of being brought to account, or he will be sufficiently strong to seize absolute control of the government, disregard all constitutional limitations, and transform himself into a despot. Furthermore, it has been demonstrated that lawmaking bodies, even though elected by the people, and responsible to them, and actuated by good intentions, cannot always be trusted to act wisely. There is always the danger, either that sudden passions or prejudices of a moment will urge an assembly to precipitate measures which are destructive to the welfare of the state, or that it may be controlled by a particular political party so incensed against its opponents as to be led to enact measures which are unjust and oppressive to those not in power.

For these two reasons, — the danger of despotism, and of hasty, unwise legislation on the part of the legislator, — there have been introduced in all modern constitutional governments systems of what are called “checks and balances.” According to these, the several legislative, executive, and judicial functions of government are distributed among distinct organs, and thus the legisla-

ture is made a check upon the executive and *vice versa*, and the judiciary upon both. Furthermore, the legislative body is usually divided into two chambers, and the chief public officials are elected for only short terms of office so that if their official conduct be not satisfactory to the people, they will fail of renomination and reelection. Finally, in cases of gross dereliction of duty, officials may be impeached, and removed from office before the expiration of their terms; and, if they have been guilty of any crime, may be then tried and punished by a criminal court.

To illustrate the manner in which the people protect themselves against possible usurpation or hasty action on the part of the rulers which they have themselves elected, we may point out some of the checks and balances in our own government. Here, as we shall find, in order that a proposal shall become a law, it is necessary that it should obtain a threefold approval, namely, of a majority of the two houses of legislature, and of the President. The refusal of the President to approve of an enactment of Congress, which is called the "veto," may, however, be overridden by a subsequent vote by two thirds of the members of both houses of the legislature. But even when this gantlet has been successfully run, a given law is still subject to another check; that is, it may be declared unconstitutional by the courts.

By unconstitutional is meant, as the word indicates, not in accordance with the Constitution upon which our government rests. In adopting this Constitution in 1789 there were several objects in view. First, there

was, as we shall see in a later chapter, the purpose of providing a definite basis upon which the individual states of our Union should be joined into a whole. Second, there was the necessity for stating in outline the manner in which the national government should be organized. And third, the point of importance in connection with our explanation of the term "un-constitutional," there was the idea of stating specifically just what powers the national Congress should have, what powers the individual state legislatures should possess, and what neither of them should enjoy. The Constitution itself provides that "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." Hence it follows, that if any law be passed either by Congress or a state legislature which concerns a matter over which Congress or the state legislature has not been given control by the Constitution, it is a violation of that instrument, and, since the Constitution is declared to be the supreme law of the land, if any question be made by any private person as to the constitutionality of a given law, he may carry a case to the courts, and there, if it be determined to be as he alleges, it will be declared to be invalid and not to be enforced.

Constitutional Amendments. — It is expressly provided by the Constitution that none of its provisions shall be changed or altered except in the way prescribed, and this way has been made very difficult. Although an ordinary law may be changed or repealed by a simple

majority vote in Congress and the approval of the President, as has been already described, in the case of an amendment of the Constitution, the following mode is prescribed by its Fifth Article:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.”

Thus, as we see, an amendment may be proposed in two ways, — by a two-thirds vote of both houses of Congress, or at the request of two thirds of the state legislatures. These conditions of proposal having been fulfilled, the amendment may be ratified and become a part of the Constitution only by a favorable vote in three fourths of the state legislatures, or by a like vote of three fourths of the conventions in the states, if that has been the mode of ratification which has been selected. The only limitation upon the amending power is that no state shall be deprived without its consent of its equal representation in the Senate.

The idea of making the conditions of amendment so difficult has been to give to the government a stability of organization which it otherwise would not have. At the same time, by rendering it impossible for either Congress or the state legislatures to extend their power

except by a constitutional amendment, these restrictions are made to constitute the most important of all the checks upon the popular will. While they do not absolutely prevent any change, they yet provide a guaranty that existing conditions shall not be lightly and inconsiderately altered. Before a change can be made, there must be an overwhelming desire for it on the part of the people, as evidenced in a two-thirds vote in Congress or of the state legislatures in proposing it, and a three-fourths vote in ratification thereof.

It is not too much to say that the amending clause is the most important clause in a written constitution. Change must be rendered possible in order to meet the demands of national development; but it must be made neither too easy nor too difficult. When rendered too difficult, revolution, that is, illegal change, is encouraged. When made too easy, the stability and continuity of the political life of the state is at the mercy of every whim or passion. Just how severe these restrictions should be is one of the gravest problems which statesmen have to solve, for no fixed rule can be given. In each case the answer depends upon the temperament of the people and a multitude of other considerations. In periods of a state's existence when social and industrial conditions are rapidly changing, there is a necessity for greater ease of amendment than when conditions are more stable. In England there is nothing but tradition and custom to prevent the Parliament from passing any law it sees fit, whether to regulate some new matter, or to alter the existing organization of the government. In past

years, when England's conditions changed so rapidly, and when her suffrage was not widely extended, this unrestricted power of her legislature was possibly a benefit, but in these days of democratic ignorance and unrest there are not a few who fear that she may be led to hasty and unwise acts; that her ship of state will prove to be, as her historian, Macaulay, has expressed it, "all sail and no keel."

Written constitutions generally exist upon the continent of Europe, and their amendment is made more or less difficult. But none of them have nearly the restrictive force of our own, since, unlike us, their legislatures themselves decide whether or not their own acts are constitutional, and their decision cannot be questioned in the courts. Thus, without formally amending their constitutions, the legislatures are able, by construing them as they see fit, to exercise nearly unlimited power.

In the case of our own national Constitution, so difficult has amendment been made that it has only been due to very exceptional circumstances that its alteration has ever been secured. The first ten amendments were adopted almost immediately after the Constitution itself went into force, and, indeed, it was generally understood at the time when the consent of the states to the ratification of the main instrument was obtained, that such addition should be made as these amendments contained. The Eleventh Amendment was adopted in 1798 to prevent suits by private individuals against a state. The Twelfth Amendment was ratified in 1804 to correct the method of election of the President and

Vice President. Since that time, now nearly one hundred years, no new amendments have been made, or even seriously proposed, except those which were made necessary by the result of the Civil War of 1861-65.

Concerning the provisions of these last amendments, and of the Eleventh and Twelfth, we shall speak later on. The first ten amendments were all of the same character. Together they constitute a "bill of rights." By a bill of rights is meant a list of those rights or privileges which are guaranteed to private individuals against control or violation by ordinary law. Congress has been absolutely prohibited from passing any law interfering with the free exercise by citizens of any of the rights enumerated in these first ten amendments.

CHAPTER VII

LAW¹

Introductory. — We have defined the state as society viewed from its organized standpoint; that is, considered in its political aspect as an organization for the attainment of peace in the first place, of protection from outside in the second place, and, thirdly, for the general regulation of those matters which for the general good should be controlled by society as a whole, and not left to individual ignorance, neglect, or injustice. Now, in order to perform these duties, it is necessary for the state to issue commands, termed laws, and in the aggregate they constitute what is termed "the law of the land." It is in accordance with these commands that the courts render their decisions in the cases which are brought before them.

In defining law as a command of the state, it is to be understood that not all laws are to be found in the definite enactment of the legislature of the state, but that many of them have their original source in customs which are recognized by the courts as binding. As being thus recognized by the tribunals of the state,

¹ In the preparation of this chapter, the author has been greatly assisted by the admirable book of Professor W. C. Robinson, entitled "Elementary Law." The quotations which have been indicated are from that work.

and enforced by its executive agents, these rules are considered as impliedly commanded by the state, that is, adopted by it as its own. In very early periods, custom was almost the sole source of new laws, but in modern times new laws owe their origin almost entirely to definite statutory enactments.

When all the existing laws of a given country are gathered into a single volume or set of volumes, the aggregate is termed a code. Such codes exist in many of our own individual states; and the "revised statutes" of the United States, in which are contained all of the federal laws in force in the United States, may possibly be termed a federal code.

Laws may be divided into several different classes, according to the subjects with which they deal. Thus, in the first place, they may be divided into public and private.

Public Law.—Public laws include all those laws that relate directly either to the organization and powers of the government, or to the relations of the individual to the state. Private laws refer to those rules which regulate the relations of individuals among themselves. These two main divisions may be also subdivided. Thus, public law embraces: (1) international law; (2) constitutional law; (3) administrative law; and, according to some writers, (4) criminal law.

Of the general scope and character of international law, we have already spoken. It governs the relations of states among themselves, and thus is distinguished from national or municipal law, which is uttered and enforced by a particular state, and has no binding force

except over the citizens of that state and over the aliens residing within its territory. Because international law lacks definite statement, does not emanate from one superior political power, and has not courts for its precise interpretation and application, as has ordinary law, there are many who are disposed to deny that it has a just title to be called law at all. But inasmuch as it is universally recognized as binding by civilized nations, and is in general strictly enforced and obeyed, for the purposes of this book we need not refuse it its customary name.

Of the character of constitutional law, the second subclass of public law, we have already spoken. Administrative law, which is the third subclass, resembles constitutional law in that it has to do with the organization and duties of the government, but is distinguished from it in that it deals with the details of governmental action, whereas constitutional law states the general principles, and also, in that, though limited by constitutional law, it is not embodied in the written constitution, and its specific provisions may therefore be altered or abolished by simple legislative act. Administrative law frequently takes the form of ordinances or particular directions issued by a chief governmental official, or by a local governmental authority, such as of a city or county.

Of criminal law, which is the last subdivision of public law, we shall speak more particularly presently. Its claim to be treated as a part of public law rests upon the fact that when violated the state appears as one of the parties, that is, as the prosecuting party in the trials which follow.

Private Law. — Private law is in turn divisible into distinct branches according to its subject matter. It thus includes :

1. The law of real property, or that which regulates the use and methods of transference of real estate, such as lands, houses, etc.
2. The law of personal property, including all forms of property not real estate.
3. Contract law, regulating the making and enforcement of all kinds of agreements.
4. Laws regulating domestic relations, such as those of parent and child, husband and wife, guardian and ward, master and servant, etc.
5. Commercial law, governing all kinds of commercial transactions, such as those involved in notes and bills, banking, etc.

All of the above branches of law are termed civil laws, as distinguished from laws termed criminal, which define and fix penalties for offenses against the state.

Those laws which determine the modes by which trials in court are conducted are called laws of practice and procedure.

Distinction between Law and Equity. — In our country there is a distinction made between two classes of civil disputes, that is, between cases “at law” and cases “in equity”; and for the trial and adjudication of these two kinds of suits distinct methods of procedure exist, and, in general, different courts. The phrases “cases at law” and “cases in equity” require some explanation, for the words “law” and “equity” have special meanings when used in this connection.

Both cases at law and cases in equity are law cases in the sense of involving the application of law to the points in dispute. In both of them, also, equity, in the sense of justice, is meted out to the parties involved. But in former times, in England, from whence we have derived much of our law as well as our methods of municipal administration, there was some reason for terming certain cases "equity cases" as distinguished from "suits at law." In those days there were definite forms in accordance with which alone disputes could be considered and determined by the courts. But in time, owing to changed conditions, these forms became inappropriate to many new controversies which arose, and in order to administer justice in these new causes, new courts were established and new methods gradually adopted. Inasmuch as these courts were created for the purpose of securing equity or justice in those matters in which it could not be obtained in the old law courts, they gained the name of courts of equity, and the laws which they enforced were called equity laws. Thus in our time we still retain the old names "law" and "equity" in distinguishing the two systems of courts and procedures, although there is no longer any distinction as to the amount of equity, *i.e.* justice, granted; nor does one enforce law any more or less than the other.

Besides law courts and equity courts, there are two other classes of courts. First, maritime or admiralty courts, which apply the rules governing property or transactions relating to the sea or navigable rivers; and secondly, probate and orphans' courts, which have

to do with the proving and execution of wills and the protection of the property of orphans.

It will be impossible to state here exactly the rules for determining when a suit is to be brought into a court of law, and when into a court of equity, for these involve distinctions upon which many volumes have been written. But in general it may be said that law cases are those in which suit is brought for the recovery of a specific sum of money, as upon a contract or a promissory note, or for payment for any article sold or services rendered, or for the settlement of the legal title to a particular piece of property, or for money compensation (termed damages) for some act complained of, as, for example, against a railroad company for an injury received through some fault of one of its employees, or against an individual for defamation of character, or for an injury to a piece of property by the wrongful act of another, as, for example, maiming a horse, injuring a building, etc.

Cases in equity, on the other hand, are those in which there are complicated accounts to be settled, or where fraud or deceit is alleged, or where the specific performance of a promise is asked, or where an order is asked from the court, termed an injunction, commanding that certain acts be not performed, or where relief is asked where mistakes have been made, or, finally, where any questions have arisen under what are called mortgages or trusts or liens.

Judicial Procedure. — In cases at law the person who makes complaint, that is, who brings the suit, is termed the plaintiff, and the one against whom the suit is

brought, the defendant. In cases in equity, the former is termed the complainant, and the latter the defendant.

The essential difference in the methods of trial of law and equity cases is that in law cases there is a jury of twelve men selected from the vicinity to decide the facts, while the judge who presides determines the law which is applicable; while in equity cases the judge decides both law and facts, and there is no jury. Also in law cases the witnesses give their evidence in open court before the judge and jury, while in equity cases, the evidence, or proof, is usually taken in the office of the lawyers engaged in the suits, which, when reduced to writing, is termed "depositions," and upon trial is read in court to the judge, or printed and given him to read, or both.

In all lawsuits, whether at law or in equity, the first thing to do in beginning proceedings is to determine what court has jurisdiction of the subject matter. This depends either upon the residence of the parties to the suit, or upon the location of the property that is involved. The second step is for the plaintiff or complainant to file with the court his formal complaint, termed in law cases a "declaration," and in equity "a bill of complaint," or simply "bill," and to notify the defendant that suit has been brought against him. The defendant then replies or "answers," and sets up any defense which he may have to the claims made against him. The plaintiff may reply to this, and the defendant may again answer in turn until the exact points in controversy are determined. This stage in the process

is termed "pleading." The law case is then ready for trial; but in a suit in equity the parties then proceed to take depositions in support of their respective claims, either by producing documents, or by examining witnesses who know of their own knowledge (*i.e.* not by hearing from others, which is termed "hearsay," and not admissible as evidence).

When all this evidence is taken, the equity case is ready for the trial in court, which consists simply of arguments before the judge as to the conclusions to be drawn from the facts which are presented, and as to the law which is applicable.

All the evidence and documents in the case constitute the "record." In complicated cases of accounts the court refers the whole matter to skilled auditors or commissioners who consider all the evidence, and render a report thereon. The parties to the suit then take such exceptions to this report as they see fit, and the case is argued in court simply in reference to the allowance or the overruling by the court of these exceptions which have been made.

In the trial of a case at law, the procedure consists in the lawyers on both sides first stating to the court and jury the points which they expect to make. Then the witnesses on both sides are examined and cross-examined. This concluded, the lawyers, in the form of what are called "prayers," ask that the judge instruct the jury that the law which is applicable is such and such. After argument upon these points, the judge grants such prayers as he sees fit, and, based upon them, instructs the jury as to the law by which they are to be

bound, and directs them that if they find the facts as based upon the given evidence to be so and so, they are to give a decision in favor of the plaintiff; or if they find the facts to be otherwise, then they are to decide in favor of the defendant. This decision is termed the verdict, and must be concurred in by all twelve of the jury.

A decision once obtained, either in a law or equity case, the next step is for the defeated party, if he still thinks that he has a good case, to take an appeal to a higher court. In a law case this takes the form of an argument in the higher court—in which there is no jury—based upon the alleged errors committed by the judge of the lower court in any of his rulings either upon the admissibility or inadmissibility of evidence, or in his instructions to the jury, which alleged errors have been excepted to by the defeated party at the time made. Also the appeal may sometimes be made upon the ground that the verdict of the jury was directly contrary to the evidence, or not supported by such evidence as would, to any reasonable man, be conceivably sufficient to support the conclusion arrived at. In general, however, a superior court will consider the judgment of the jury in the court below as to the facts, to be conclusive, and will interpose its own opinion as to them only in very extreme cases where it is beyond all probability that their verdict was a reasonable one. Where there is ground for reasonable doubt the judgment of the jury will not be reversed; but if the superior court thinks that the judge has committed any material error in his statement of the law, a new trial is ordered in

the lower court. Upon these points the higher court considers what is the true law, uninfluenced by the decision in the lower court.

In the case of an appeal to a superior court in a suit in equity, the whole "record" goes up, and the trial is substantially similar to that held in the lower court. A final decision is given based upon all the merits of the case, instead of simply an order or refusal for a new trial as in the case of a suit at law. The only exceptions to this are where an irregularity or impropriety has occurred in the lower court, or where new and material evidence has been discovered since the first trial. In such cases, a new trial in the lower court is sometimes ordered.

As we shall see when we come to consider the systems of courts in the United States, there are sometimes three or four grades of courts, and thus there may be an appeal from the second court to a third or fourth still higher tribunal, before a final decision is obtained. It is usual to fix a minimum to the amount of property which must be involved in a suit in order to permit its being appealed to the higher courts.

Criminal Law.—It is usual to make a distinction between public and private illegalities. Private wrongs, as slander, breach of contract, etc., are acts that interfere with one's personal rights, and give the plaintiff a claim for money damages. Acts, usually attended by violence, which the law punishes by fines, imprisonment, or death, are called public wrongs or crimes. Crimes of a serious nature are known as felonies, while those of a less grave character are designated as misde-

meanors. In a very true sense, however, all violations of the law, whether attended by civil or criminal consequences, are, in essence, public wrongs.

As a distinguished writer upon law has said : "There is a sense in which all wrongs are public wrongs, since they involve an interruption of the duties of the subject to the state, or interfere with that protection which the state owes to the subject. But there are certain wrongs which do not terminate upon the individual whose property or person they assail, but reach through and beyond him to the social fabric of which he forms a part, and violate the peace and order of the state. Such wrongs contain an element of evil, which is wanting in the mere private interest. They strike at the foundations of all civil government, and justly are regarded, by the law, as wrongs of a different nature, and as demanding a different redress." Thus a crime has been defined as "an injury so atrocious in its nature, or so dangerous in its example, that, besides the loss that it occasions to the individual who suffers by it, it affects, in its immediate operation or in its consequence, the interest, the peace, the dignity, or the security of the public."

The same act may often give rise both to civil and criminal consequences. For example, a railroad train may be run with such gross negligence that the engineer or conductor may be held to be criminally responsible for an injury caused by such negligence, and, at the same time, the person injured may have a right to claim money damages from the railroad company.

Law and Morality. — Law and morality are closely related, but are not identical, morality being the broader

term. Law simply commands those general actions which society as a whole declares to be right, and forbids those which it declares to be wrong; but from its very nature the state, go as far as it will, can make no pretense of controlling any but the outward acts of the individual, and only the more flagrant of those. The law may mark out the general legal obligations of the husband and father, but it cannot compel him to be a good husband or parent in the truest sense. Law necessarily has to be stated in the form of very general propositions. Furthermore, it has to depend wholly upon threats of physical pains and penalties or assessment of fines for its binding force, while true morality looks almost wholly to the motive which prompts an act, rather than to its consequences. Law thus necessarily has to appeal simply to the selfishness, that is, to the self-interest, of the would-be wrongdoer; while morality finds its force in the sense of personal self-respect and the consciousness of the obligation of duty in the breast of the individual.

Since the law can govern only man's outward acts, it has to allot its punishments accordingly. It has not the means for discovering, with sufficient accuracy for practical purposes of punishment, men's motives, which constitute the precise element involved in duty and morality. In general, the law has to punish all acts of a given class with equal severity, the latitude of discretion which can safely be left to judges and juries being proportionate to the means which they have of discovering the true moral responsibility and guilt.

The point especially to be emphasized here, in mak-

ing the distinction between law and morality, is that the true citizen is to find the field of right and duty a far wider one than that of mere law. He is to obey the law in general, both as a moral duty which he owes to himself, and as a social and civic duty which he owes to his fellow citizens. He is also to act justly, charitably, and honestly in a multitude of other acts which his conscience tells him are right, even though were he not to do so, he would be rendered liable to no civil or criminal penalties under the law. He is not to break a fair contract just because he knows that, owing to some circumstances, the one with whom he has covenanted will not be able to hold him to his promise in an action at law. He is not to indulge in business practices which are sharp, when to do so simply shows upon his part an ability to gain an unjust advantage and yet keep beyond the clutches of the law. He is to be a good father, a good husband, a good son, and a good citizen in every respect, irrespective of the extent to which the law is able to compel him to be so.

It is the policy of the state, and a very correct one too, to leave as much as possibly can be left to the individual morality of its citizens, rather than to extend the compulsion of the law; for it need not be said that where there is freedom from coercion there is a greater feeling of self-responsibility, and hence the possibility of a higher and broader morality. Where men obey from necessity they are apt to forget the moral obligation.

Criminal Responsibility. — The law cannot govern motives from the moral standpoint, but it does recognize the element of intention, as fixing responsibility.

Thus, in general, infants and insane and weak-minded persons are not responsible for their acts, for the reason that they are not held to be guilty of criminal intent. So also in many cases of accidents and of mistakes, absence of intent will relieve from responsibility. Likewise an act done under compulsion will not be considered criminal, although it would be criminal if freely performed. Ignorance of the law excuses no one. Every one is supposed to know what the law commands and forbids. But ignorance of fact will sometimes excuse, as when a person, honestly and reasonably believing a certain state of affairs to exist, commits an act which would not be a crime if such a state did exist. In such case he is not held criminally liable if it should turn out that he was mistaken. It is to be emphasized, however, that his belief that the given facts are true must be one which is warranted by reason and good sense.

Finally, in regard to criminal intent, it is to be observed that there are certain classes of acts the evil results of which are so apparent to any reasonable being, that, when committed, the law conclusively infers intent. That is, the one committing them is not allowed to show that he was thoughtless or negligent and had no evil intent. The acts are such that public policy demands that criminal responsibility be attached to them irrespective of intent. A man, for instance, cannot fire a pistol in a crowded street, or light a fire at the side of a house, and then contend that he did so without evil intent, or that he did not think any harm would result. Even though he be able to support such

a contention by proof that no possible satisfaction or benefit could accrue to him from the evils which have resulted, he is presumed by the law to know what would be the probable results of his acts, and this presumption cannot be rebutted.

In determining responsibility for crime, not only the one actually committing the wrongful act is held liable, but also those who assist or concur in any way in the deed, either before its commission, by advising, encouraging, or aiding, or after it, by concealing the criminal or failing to report knowledge of it.

Felonies and Misdemeanors.—Crimes are divided according to their seriousness into felonies and misdemeanors. Felonies include such crimes as murder, manslaughter, rape, arson, burglary, theft, etc., which are punishable by death or imprisonment in the penitentiary. Misdemeanors include such lesser offenses as maintaining nuisances, violating city ordinances, the lighter forms of assault, etc., and are punishable by fines, or short imprisonment in city lock-houses or county jails.

There is one crime which is usually placed in a class by itself. This is treason. "Treason is an act committed by the subject, in violation of the allegiance which binds him to the state. It is distinguished from all other crimes by this—that, whereas they attack primarily the property or person of an individual, or some single public interest, and, indirectly, if at all, affect the state, treason assails the state itself, and seeks to overthrow and destroy that political society which his allegiance obliges the subject to defend.

Hence its name treason, denoting treachery and breach of faith, or that more expressive phrase which characterized it in the Roman law, *crimen laesae majestatis*, the crime of violated sovereignty."

Formerly treason was construed to include many acts, but according to the Constitution of the United States this crime in this country is limited to levying war against the United States, adhering to its enemies, or giving them aid and comfort; and for conviction there is required the testimony of at least two witnesses to the same overt act, or a confession in open court.

Criminal Procedure.—The first step in bringing to punishment an offender against the criminal law is the arrest. This may be either without warrant, as where a crime is committed in the presence of the man making the arrest, or when he has good reason for believing that the man arrested is the one who is guilty of a crime that has been committed. In the above cases either a police officer or a private person may make the arrest. Or the arrest may be made by a warrant, which is a paper issued by a magistrate commanding an officer to arrest the man therein described, for alleged participation in a specified crime which has been committed.

The prisoner being taken into custody, the next step is to bring him before the proper judge or magistrate. If that judge or magistrate has jurisdiction over the offense, there may be an immediate trial. If not, the prisoner is "committed" or sent to jail, there to await the action of the grand jury or trial before the proper court, unless he be released on bail. By bail is meant

a security of a certain amount of money given by friends of the accused, as a guaranty that he will present himself in court for trial at the proper time, such amount of money to be forfeited to the state in case the one bailed does not appear. Failure to appear is termed "jumping bail." The amount of bail demanded is determined by the court.

There are three ways in which one suspected of crime may be formally accused of the offense: by information, by indictment by a grand jury, and by presentment.

"An information is a written accusation, presented under oath, by a proper public prosecutor (prosecuting attorney, or district attorney, or county or commonwealth attorney) to a court having jurisdiction of the offense charged therein." This is the mode of procedure followed in cases of small magnitude, though, in some states, it is used almost to the exclusion of every other.

"An indictment is a written accusation presented by a grand jury under oath, and upon the suggestion of the public prosecutor, to a court having jurisdiction of the offense charged therein." A grand jury consists of a number of men selected from the vicinity, whose duty it is, when assembled, to inquire into all offenses which have been committed in the district from which they have been selected, since the time of their last meeting. This is usually done by the public prosecutor drawing up indictments charging certain persons with particular crimes. The jury then examines all the evidence which can be obtained in support of these

charges, and if a majority of the jury think that there is sufficient evidence to justify them in ordering the arrest and trial of the accused ones, they give their assent to the indictments and return them as "true-bills." Upon this, warrants are issued for the accused ones, if not already in custody. Where the evidence adduced before the grand jury does not seem to be sufficient to warrant an arrest and trial, the indictments are returned as "not-true-bills," and the accused ones, if already in custody, are released.

A presentment is a written accusation presented by the grand jury upon its own motion, that is, without waiting for an indictment to be framed and presented by the public prosecutor.

The presentation of the formal accusation against a suspected criminal may take place either before or after the suspected one has been taken in custody. If before, a warrant is immediately issued for his apprehension. In such cases, however, the warrant is termed a process.

The conduct of a criminal trial much resembles that of a civil law suit. A public prosecutor appears as the plaintiff, and alleges the violation of a given law by the prisoner, who thus appears as defendant. The first step, which, however, does not appear in a civil suit, is the "arraignment" or the formal demand for the prisoner to say whether he is guilty or not guilty of the crime of which he stands charged. In answering, he is said to plead to the indictment, information, or presentment. If he refuses to reply, the plea of not guilty is ordered to be entered by the court. The

prisoner may, however, without answering guilty or not guilty, allege either that the court has not jurisdiction of the offense, or that the indictment has not been properly worded. When these questions are raised they are argued by the lawyers on both sides and decided by the judge before proceeding further. Or the prisoner, admitting his guilt, may, if he can, make the point that he has been tried and convicted before and has suffered punishment for the same offense, or that he has been tried and acquitted, or that he has been pardoned by the proper pardoning powers, that is, by the state Governor or the President of the United States. In any of these cases he cannot again be tried for the same crime, for it is the policy and command of the law that not only shall no one be punished twice for the same act, but that once tried and found innocent, he shall not be again tried, no matter what new and convincing evidence against him may be discovered.

When these preliminary objections have not been made, or, when, if made, they have been decided adversely to the prisoner, the trial proceeds. The procedure consists of the examination of witnesses and the production of any other evidence which the prosecuting attorney may have in support of the charge against the one tried; and the similar examination of witnesses and production of proof by the attorney for the prisoner in defense of the innocence of his client. As in the civil suit, the law is determined by the judge who presides, and the facts by a jury of twelve men, termed a "petit jury" in distinction from the grand jury. The petit jury consists of twelve men from the vicinity, placed under

oath to try the case fairly, and wholly upon the merits of the evidence which may be presented to them in open court. Absolute unanimity is required for conviction. In case a jury cannot come to a unanimous decision, it is said to be "hung," and a new trial before a different jury must be ordered.

Before the jury is sworn, either side may object to any of its members if for any reason they are alleged to be disqualified to serve, as for example, if they have already made up their minds, or are strongly predisposed one way or the other, or are related to the accused, or, in cases of murder, have any objections to the death penalty in case of conviction. These objections, when raised, are termed "challenges." Besides challenges for cause, both sides are usually allowed a certain number of peremptory challenges, for which no grounds need be stated.

After argument by the counsel on both sides, and the charge of the judge, the jury retires to another room by itself, to deliberate upon its verdict. If its verdict be "Not Guilty," the prisoner is at once released. If "Guilty," he may still have the right of appealing to a higher court for a new trial, which will be granted if it be proved that there has been any material irregularities in the trial, that the jury has misbehaved in any way, or that any error of law has been committed by the judge in his rulings upon the evidence or charge to the jury. The state has no right to appeal.

After conviction and refusal of new trial by the highest court, the only recourse left to the prisoner is an appeal for pardon addressed to the Governor of the

state, if he has been tried in a state court, or to the President of the United States, if he has been tried in a federal court. If pardon be refused he must undergo "execution of his sentence."

Extradition. — When a criminal flees from the state in which his crime was committed to another state, the state whose law has been violated can apprehend and bring him back to justice only with the consent of the state to which he has fled. Between most civilized states, however, special treaties have been made providing for the mutual surrender of fleeing criminals. These are termed extradition treaties.

Our Constitution makes extradition between the individual states of our Union a duty. Article IV, Section 2, provides that : "A person charged in any state with treason, felony, or other crimes, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

In extradition treaties between independent states, it is always provided that persons charged with political crimes, that is, crimes against the government, shall be exempted from their operation ; also, that the criminals shall be surrendered to the state from which they have fled, upon condition that they be tried only for the crimes for which they are extradited, and also that they be allowed the same fairness of trial in the way of having counsel and opportunity to present defense, that they would have if they were tried in the courts of the states by which they are surrendered.

Constitution Guaranties. — In the eyes of the law a person is innocent until conclusively proved to be guilty. In order to render every one safe from unjust conviction, the United States Constitution establishes certain rights of fair trial and certain opportunities for defense to an accused person, which cannot be denied to him by ordinary federal law. These provisions are found in the first eight amendments, which, as we have before said, constitute a bill of rights. Amendment V reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Amendment VI provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Amendment VII provides that: "In suits at common law, where the value in controversy shall exceed twenty

dollars, the right of trial by jury shall be preserved." Amendment VIII provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Every person upon being arrested for alleged crime has the right to an immediate hearing as to whether there is sufficient cause for his imprisonment. This right is enforced by obtaining from the court a writ of *habeas corpus*, which is an order directed to the officer by whom the accused is kept prisoner, to bring the prisoner into court and to show cause why he is detained. Article I, Section 9, of the Constitution provides that: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

The same section also provides that no bill of attainder or *ex post facto* law shall be passed. A bill of attainder is a special legislative act by which one is condemned to punishment for an alleged crime without opportunity of making defense such as he would have in a court of law. An *ex post facto* law is one making an act a crime which was not a crime at the time it was committed, or which increases the penalty for an act beyond what it was at the time of its commission.

The above constitutional provisions are simply in restraint of the federal government of the United States, but the constitutions of all the individual states contain substantially similar restrictions upon their respective state governments.

Punishment. — That there is sufficient justification for the punishment of crime would seem to be beyond

question. The immense value of the orderly life which the state provides was shown in the first chapter. But if the state is to be able to perform the duties which are laid upon it, it must have the obedience of its citizens; and so long as all men are not naturally disposed to respect law, and to refrain from violating the persons or property of others, it is necessary for the state to compel them, if possible, to do so.

But granting the right of the state to punish, it yet remains to be determined what is the fairest and best way of punishing. In solving this problem, the following considerations must govern :

In the first place, prevention of crime is obviously better than its mere punishment after it has been committed. It is therefore the duty of the state to remove, as far as possible, those conditions which are known to lead to lawlessness. Thus, intoxication may be lessened by a proper regulation of the liquor traffic; education may be widely diffused among the poorer classes; children may be removed from the keeping of parents or other relatives who are morally unfit to have charge of them; and all possible methods may be used to relieve poverty and debasement or to promote the morality of the people at large, and thus tend to prevent crime.

These are some of the educative or indirect means by which criminality may be lessened. Would-be violators of the law may also be directly deterred from crime, as for example, by keeping the streets of the city well lighted and sufficiently patrolled by policemen. But above all deterrents, the most effective is the fixing of penalties for breaches of the law, that will most strongly

appeal to those who would be predisposed to crime. The fate of those who do commit crime should be made an effective example to all others.

In estimating the deterrent influence of punishment, the quickness and the certainty with which retribution is meted out are found to be far more effective than mere severity. The almost absolute certainty of immediate retribution is more likely to restrain the vicious from giving way to their criminal impulses, than the mere threat of a punishment, more severe perhaps, but so slowly and imperfectly administered, that the would-be criminal knows that he has a very fair chance of escaping punishment altogether. For this reason, no effort should be spared to render police and detective forces as efficient as possible in discovering and apprehending criminals; also, when a wrong-doer is once arrested, there should be no delay in the trial, and the penalty imposed should be such that upon presentation of sufficient proof of guilt, the ordinary jury will have no hesitation in inflicting it. One of the principal reasons why so many lynchings occur in this country is because the people find the regular execution of criminal law so slow, and often so uncertain.

Not only should punishment be so administered, and of such a character as to be calculated to deter others from crime, but it should also, so far as possible, have for its motive and effect, the reformation of the criminal himself, and thus deter him from the commission of future crimes. It is, however, but too true, that in very many instances the criminal law has precisely the opposite effect. Especially is this true where youths and first

offenders are forced to associate, while imprisoned, with older and more depraved criminals, and thus, by the end of their sentence, become thoroughly corrupted.

It is inevitable that conviction and punishment for crime should both injure the convicted man's self-respect, and give him a bad name in the community, thereby making a subsequent honest life more difficult. But this evil can be reduced to a minimum, and, in some cases, more than offset by other beneficial measures. The corrupting influences of imprisonment and the loss of self-respect can be lessened by keeping youths and first offenders separate from habitual and depraved criminals. Also the method has been tried in some places, and with considerable success, of giving to the justice before whom the trial is held the right to suspend sentence during good behavior of first offenders in cases of the lesser crimes. Thus those who, by sudden or extreme temptation, have been led into thoughtless crime, are preserved from the degrading influences of prison life, if, by subsequent good behavior, they demonstrate their repentance and desire to lead an honest life. On the other hand, if they be of a criminal disposition, they know that upon their second wrongdoing, however slight, their suspended sentence will be executed upon them. It is not expedient to give to the judge this power of suspending sentence in cases of serious crimes, such as homicide, burglary, arson, and the like.

The evil effects of imprisonment have been lessened in some institutions by the introduction of systems of enforced education, physical and mental, and training

in some useful handicraft. Especially has this been done in the State Reformatory at Elmira, New York.

Another essential element in the good administration of penal justice is absolute fairness in its application to all persons. The nature and gravity of the offense should determine the character and severity of the punishment, and prominent or influential persons should receive no different treatment, when convicted of crime, than other individuals. Nothing is more calculated to create among the people a disrespect for, and even hostility to, the law, than a well-grounded belief that its application is not made to bear with equal weight upon all persons of all ranks.

It follows from what has been said, that punishment should not be inflicted simply for the sake of punishment. That is to say, it should not be vindictive. It should be inflicted only for a purpose. As related to the person upon whom it is inflicted, it may be considered retributive in character; but considered from the standpoint of the state or society at large, its primary purpose is self-defense, and its ultimate effect should be, as far as possible, deterrent to others and reformatory upon the criminal himself. Where the death penalty is inflicted, the reformatory element cannot, of course, enter. But this penalty is provided only for those crimes which are of so dangerous and heinous a character, that society has to look solely to protecting itself against any possible further evil deeds on the part of the one convicted, and to providing the most effective deterrents to others who might be tempted to commit similar offenses.

In recent years many scientists have made very careful study of the physical and mental characteristics of criminals, and have found reasons for believing that, in many cases, persons become habitual criminals because of inherited mental and physical defects, which so predispose them to crime that it is almost inevitable that they should become offenders against the law. If this be true, such habitual criminals are unfortunate, and not responsible for their criminality to the same degree that other persons are, and their punishment should therefore be made proportionately less severe. At the same time, since they are a menace to society, and it is almost impossible to make of them useful and honest citizens, though the conditions of their imprisonment should be rendered less severe, its duration should be extended. Or, if such persons be not actually kept in prison for indefinite periods of time, they can be kept under continual surveillance by the police, and required to report themselves at frequent intervals, and to give accounts of what they have been doing since the last report. Thus the possibility of their committing crimes will be largely lessened.

It is not possible to enter here at greater detail into methods of punishment, but enough has been said to indicate that many problems are involved in this subject, and to show how necessary it is that the intelligent citizen should know some of the principles underlying their proper solution.

PART II

CIVIL GOVERNMENT IN THE UNITED STATES



CHAPTER I

HISTORICAL INTRODUCTION

IN Part I of this book, we have considered those general characteristics of law, politics, and government which it is necessary to know in order properly to appreciate the detailed description of the governmental organization of any particular state. This introductory part has been all the more necessary to us because of the fact that our own government is of a very complex type, and therefore requires an especially adequate preparation for its intelligent study.

Our national government is federal in form. That is, it consists of a central organization possessing supreme power in reference to all matters of general interest to the whole country; while, subordinate to it, are forty-five state governments, each controlling those matters which pertain especially to their own respective areas. Besides these forty-five individual states, there are a number of so-called territories, regarding the character of which we shall speak later.

In any large state there necessarily exists a certain degree of local government. By this is meant that

when the territory and population of a single political power is of considerable size, so numerous are the governmental duties which have to be performed, that it becomes necessary that the whole territory should be divided into districts, and that in each of these districts local governments should be established and intrusted with the management of the interests specially and solely pertaining to their respective local areas; while to the central power is left the performance of all matters of national interest, as well as a general oversight and control of the local governments. These local governments, to the extent of their powers, thus act as agents of the central authority. By this local distribution of duties the twofold benefit is attained of preventing the central power from being overburdened with work, and of providing organs which, from their local character, are far better able to appreciate the needs of, and better qualified to perform the duties pertaining to, their particular districts, than would be the central government. Thus, France is divided into departments, cantons, and communes, and England, into counties, parishes, boroughs, etc. And so, also, as we shall see, the individual states of our own Union are divided into counties and towns and townships.

But the local government, as exhibited by the separation of our whole country into forty-five states, each with its own government, is very different from the local government illustrated by the counties of England, the departments of France, or the counties and townships of our individual states themselves. The individual states which compose our Union are, to be sure,

subordinated to the central or federal power, but their governments have not only an extent of power and a latitude of discretion far beyond that ordinarily given to local governments, but the older ones have seen the time when they were themselves individually sovereign and independent states. This historical fact is of great importance to an understanding of the theory of our federal government, for it has tended to cause Americans to view their state governments with greater veneration and patriotism, and hence to guard with greater care any undue limitation of their powers, than they would have done if these state areas and state governments had been artificially and arbitrarily created by a preëxistent centralized power. Before, therefore, proceeding to describe more particularly the manner in which these state governments are related to the federal government, we shall give in a few words the historical facts which led up to, and necessitated, the coalescence of these individual states into a federal government.

Steps leading to the Adoption of the Constitution. — The thirteen American colonies, which in 1775 defied the power of Great Britain, and which in a stubborn struggle were able to win their independence, were settled at various times, and by colonists actuated by widely different motives. At the time of the beginning of their resistance to the oppressive acts of their mother country, they were, in their governments, entirely separate from and independent of each other. "Though the colonies had a common origin, and owed a common allegiance to England, and the inhabitants of each were

British subjects, they had no direct political connection with one another. Each, in a political sense, was sovereign within its own territory. The assembly of one province could not make laws for another. As colonists they were also excluded from all connection with foreign states. They were known only as dependencies. They followed the fate of their mother country both in peace and war. They could not form any treaty even among themselves without the consent of England." (Story.) All the colonies did not bear the same relation to the English government. Owing to the different ways in which the first settlers had obtained from the King the right of occupancy of the soil, the resulting colonies had obtained different rights of government, and were placed under different obligations to the Crown. But notwithstanding the diversities of colonial governments that arose in this way, there were many features common to them all. All the colonies considered themselves dependencies of the British Crown. All the colonists claimed a right to the enjoyment of the privileges and rights of British born subjects, and the benefit of the common law of England. In all the colonies there existed local legislatures, one branch of which, at least, consisted of representatives of the people.

For these local legislatures the colonists claimed the right to legislate concerning purely colonial affairs. It was generally conceded that in matters of general interest to the whole British kingdom, the English Parliament might exercise control, but it was maintained by the Americans that concerning matters relating to themselves alone, it was the right of their own legisla-

tures to legislate. Under this head they classed taxation.

Probably the best statement of the rights and liberties claimed by the colonists is contained in a declaration drawn up in 1765 by the Stamp Act Congress, in which nine of the colonies were represented. This declaration asserted that the colonists "owe the same allegiance to the Crown of Great Britain that is owing from his subjects born within the realm, and all due subordination to that august body, the Parliament of Great Britain;" that the colonists "are entitled to all the inherent rights and liberties of his (the King's) natural born subjects within the kingdom of Great Britain. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes be imposed on them but with their own consent given personally or by their representatives;" that the "people of the colonies are not, and from their local circumstances cannot be, represented in the House of Commons of Great Britain. That the only representatives of these colonies are persons chosen by themselves therein; and that no taxes ever have been or can be constitutionally imposed upon them but by their respective legislatures, and that trial by jury is the inherent and invaluable right of every British subject in these colonies."

In opposition to these views, the English government held that Parliament had the authority to bind the colonies in all matters whatsoever, and that there were no vested rights possessed by the colonists that could not be altered or annulled if Parliament so desired.

The Stamp Act Congress.—The indignation aroused by the attempt of England to tax her colonies without allowing them a voice in the Parliament which imposed such taxes, gave rise in 1765 to a meeting of delegates from nine of the colonies. This assembly was called the “Stamp Act Congress.” The obnoxious Stamp Act was repealed, but England continued to impose other taxes.

The First Continental Congress.—An invitation was sent out by Virginia to all the colonies, calling a meeting of delegates to consider what could be done by their united action to meet their common grievance. Thus met the “First Continental Congress” in 1774, in which all the colonies but Georgia were represented. This Congress also adopted a declaration of rights and grievances.

The Second Continental Congress.—On May 10, 1775, assembled the Second Continental Congress, in which all the thirteen colonies were represented. The battle of Lexington had then been fought, and blood had been shed. Though the colonies had as yet no intention of throwing off all connection with England, they were now prepared to resist with arms any invasion of their rights. The work performed by this body has been concisely and forcibly stated by the historian Schouler. He says: “Thus originated that remarkable body known as the Continental Congress, which, with its periodical sessions and frequent changes of membership, bore for fifteen years the symbols of federal power in America; which, as a single house of deputies acting by colonies or states, and blending with legislative authority, imperfect executive and judicial functions, raised

armies, laid taxes, contracted a common debt, negotiated foreign treaties, made war and peace; which, in the name and with the assumed warrant of the thirteen colonies, declared their independence of Great Britain, and God's blessing accomplished it; which, having framed and promulgated a plan of general confederation, persuaded these same thirteen republics to adopt it, each making a sacrifice of its sovereignty for the sake of establishing a perpetual league, to be known as the United States of America, a league preserved until in the fullness of time came a more perfect Union."

The acts of this Congress were the first legislative acts by the joint action of the colonies.

The Second Continental Congress was essentially a revolutionary body. That is to say, the authority for its acts rested upon no definite grant of powers by the colonies, but was assumed by it to meet the crisis of war. Properly speaking, it could hardly be called a government. It was more in the nature of a directing, advisory committee. Its commands possessed a recommendatory character only, and it was entirely without executive officers, or legal control over either individuals or the colonies.

The Articles of Confederation.—A stronger central power than that afforded by the Continental Congress was seen to be a necessity. Accordingly, in 1777, there was drawn up a scheme of union embraced in a paper termed "The Articles of Confederation." These articles, though drafted as early as 1777, did not go into effect until 1781, the provision being that they should not be considered as in force until ratified by all the col-

onies, and several refused to ratify until all state claims to western territory were relinquished in favor of the national government.

Elements tending to Separation and to Union. — We must remember that this was a union of thirteen previously separated colonies. The facts which had tended to keep them apart had been the difficulty of travel and communication between the colonies, the lack of commercial intercourse, but more than all, their local jealousies. The small colonies feared the larger; commercial jealousies were very keen. Disputes about boundaries were frequent. Colonies with good harbors and sea-ports desired to keep the benefits of them exclusively to themselves. At that time, too, the people of the thirteen colonies were far more widely separated in their forms of government, and in their industrial habits and social customs, than they now are. On the other hand, the facts which tended to urge on a common union between them were common race, language, and nationality, many similar political institutions, and, most of all, a common peril.

Scheme of Government under the Articles of Confederation. — The purposes of this Confederation are best stated by giving Article III of the Articles: "The said states hereby severally enter into a firm league of friendship with each other for their common defense and security of their liberties and their mutual and general welfare, binding themselves to assist one another against all force offered to or attacks made upon them or any of them, on account of religion, sovereignty, trade, or any other pretext whatever."

Under these Articles of Confederation all the functions of the federal authority, legislative, executive, and judicial, were vested in a Continental Congress, consisting of a single house of delegates, who voted by states, and were appointed annually in such a manner as the respective states directed. Each state was entitled to not less than two nor more than seven delegates, a majority of whom decided the vote of the state in question. The executive functions were largely performed by a Committee of States, empowered to sit during recesses. For all important measures the vote of every state was required. The vote of all thirteen was also required for an amendment to the Articles of Confederation.

The scheme of government outlined by the Articles was simply a makeshift. It was an effort to form a federal power without diminishing the powers of the states, an effort "to pare off slices of state government without diminishing the loaf." That such a union could be perpetual was impossible.

Defects of the Articles of Confederation.—In this scheme of union there were many fatal defects, chief among which may be mentioned :

1. The want of some compulsory means of enforcing obedience to the acts of Congress. The Articles provided neither an executive power nor a national judiciary worth mentioning. As one writer has said, "Congress could declare everything, but do nothing." A single state could with impunity disregard any decree of the Congress.

2. The large vote required to pass all important measures.

3. The absence of the right to regulate foreign commerce, and make duties uniform, and to collect those duties. This defect was one of the most vital, and more than anything else decreed the failure of the practical working of the Confederation and showed the necessity of a better and stronger national government.

4. The virtual impossibility of amendment. Since a unanimous vote was required, the selfish interest of one state could, and did, stand in the way of an amendment beneficial and necessary to the other twelve.

5. There was no power to enforce treaties. Foreign countries recognized this, and therefore refused to enter into any treaties with us. Washington said, "We are one nation to-day and thirteen to-morrow. Who will treat with us on such terms?" England refused to carry out the conditions of the treaty of 1783, and continued to keep troops on our western borders.

6. The central authority had insufficient power to control disputes arising between the states.

7. The lack of a federal judiciary.

8. Lack of power to collect taxes, or to raise revenue to defray even the ordinary expenses of government. The whole power given to Congress under this head was the "power to ascertain the sum necessary to be raised for the service of the United States, and apportion the rate of proportion on each state." The collection of such taxes was left to the states themselves, and if they refused (as they frequently did), the federal government had no power to compel them.

Adoption of the Constitution. — Actual hostilities ceased in 1781. In 1783 peace with England was

declared, and the independence of the colonies was achieved. The war left the American people with an empty treasury, and a country drained of its wealth and impoverished by the exhausting struggle. It left us with a large national debt, both to our own citizens and friends abroad, and most of all, left us with an army of unpaid patriotic soldiers. And no sooner had foreign danger been removed than domestic troubles arose which filled all with gloomy forebodings of the future. With the loss of the cohesive principle which common danger supplied them, the colonies began to fall apart. Even during the progress of war the weakness of the Union had showed itself. Washington unhesitatingly declared that it was the lack of sufficient central authority that caused the prolongation of the war.

One instance will show how weak was the federal authority. During the summer of 1783, when Congress was at Philadelphia, some eighty deserters from the army so threatened Congress as to force a removal of our federal capital from that place to Princeton. The continental finances were in a deplorable condition. Congress could not even collect sufficient taxes for the payment of the interest on the public debt. The states could, and often did, refuse to pay their proportion of taxes imposed upon them by Congress. Congress made a last attempt, in 1785, to raise a revenue by a tax on imported goods, but this measure failed, New York refusing to ratify. Congress, indeed, did not collect one fourth of her demands. Commerce was going to ruin. England refused to allow our country the rich trade with the West Indies. To these troubles were

added the mutual jealousies and selfishness of the states. Each of them tried to attract commerce to itself, and passed laws hurtful to the other states. The people in Massachusetts were in insurrection. The French minister wrote to his country, "There is now no general government in America, no head, no Congress, no administrative department."

For all these evils the limited and imperfect powers conferred upon the federal government by the Articles of Confederation afforded no adequate remedy. Even the Confederate Congress was now in danger of breaking up. States, to save expenses, neglected to send delegates, and repeated appeals had to be made to get representation from nine states so as to pass important measures. A better union was seen by all thoughtful citizens to be necessary, but very difficult to obtain, owing to interstate differences. The idea of having a convention separate from the Congress, whose work should be the framing of a stronger government, gradually gained ground.

The Constitutional Convention was obtained in a roundabout way, and only after repeated failures. The first attempt to obtain such an assembly was made at Annapolis, Maryland, in 1786. Only five states sent representatives, and the convention accordingly adjourned to Philadelphia, where in May, 1787, delegates from all the states, except Rhode Island, finally assembled.

The Constitutional Convention. — Fifty-five delegates were present. With scarcely an exception they were all clear-headed, able, and moderate men. Virginia sent Washington, Madison, Edmund Randolph; Pennsylva-

nia sent Benjamin Franklin, Robert Morris, and James Wilson; New York sent Alexander Hamilton; New Jersey, William Patterson; and South Carolina, the two Pinckneys. Washington was chosen President of the convention. Two rules were adopted: First, proceedings were to be secret; and, second, one vote was to be given to each state, thus making it of no importance whether a state had a large or a small delegation.

Though the delegates had thus assembled to form a new and better union, they differed widely in their views as to what changes were necessary, and as to what powers should be given to the federal government, and what retained by the states. Some desired merely a change of the existing Articles of Confederation, granting more power to the federal government; while others wished for an entirely new constitution.

The convention at once divided into two parties, — the one representing the smaller states, such as New Jersey and Delaware; and the other, the larger states, such as Virginia, New York, and Massachusetts. The plan brought forward by the party of the large states was that presented to the convention by Edmund Randolph of Virginia, and generally known as the national or large state plan. This plan proposed a Congress of two houses, having power to legislate on all national matters, and to compel obedience on the part of the states. Representation in both houses was to be based on population, thus giving to the larger and more populous states the control of both branches of the legislature; and also, since by this scheme the President, executive officers, and judges were to be ap-

pointed by Congress, control of the whole administration of the new government as well.

On behalf of the small states, Patterson of New Jersey introduced what is called the New Jersey plan. By this plan the old federal Congress was to be continued with its single house of legislature, and equal state vote.

The chief point upon which the two plans differed was as to how representation in the legislature should be apportioned among the states: whether it should be according to population, and with two houses, or whether there should be but one house, in which each state should have an equal vote. The question was settled by a compromise. It was agreed that there should be a legislature of two houses, a Senate, or upper and less numerous branch; and a House of Representatives, the popular and more numerous lower branch. In the Senate each state was to have an equal representation, thus putting the large and small states on an equal footing. On the other hand, in the House of Representatives representation was to be according to population, thus favoring the larger states.

Another point upon which the convention differed was concerning the slave trade,—whether it should or should not be allowed to continue. This question was also compromised, it being agreed to permit its continuance for twenty years (until 1808), after which all importation of slaves might be prohibited.

Yet another point in dispute was whether the slaves should or should not be counted in estimating the population of the states, in order to determine the number

of representatives to which each state should be entitled. This likewise was compromised. It was agreed that for this purpose five slaves should be counted equivalent to three white men.

These three main points being settled by compromises, agreement on other questions of government was more easily reached, as on a single chief executive and on a federal judiciary; and the decisions as to what powers should be given to the President, what to the Senate, and what to the House were more easily made. The convention adjourned September 17, 1787, having been in session a little over four months. Thus was prepared the Constitution under which we are now living, an achievement declared by Guizot to be the greatest work of its kind, and by Gladstone to be the greatest work ever struck out at one time by the hand of man.

The Constitution having been agreed to in convention, it was next submitted to the vote of each of the states for acceptance. It was decided in this convention that it should be considered as ratified, and should go into effect as soon as accepted by nine of the thirteen states.

The adoption or rejection of the Constitution now became a question which claimed the entire attention of the states, and from this contest arose the first political parties in the United States. Those favoring the adoption of the Constitution were called "Federalists," and those opposing it "Anti-Federalists."

Arguments for and against Adoption. — The Federalist party was composed of those men who were desirous

of a strong central government, and for this reason favored the proposed Constitution. This party was especially strong in New England, largely because New England, being the commercial part of the colonies, had had the lamentable weakness of the old Confederation brought home to it very forcibly by the disorganization and loss of commerce attendant upon the inadequate regulations of the Continental Congress.

The Anti-Federalists were those who approved of strong state governments, and a comparatively weak central government.

The argument used by the Federalists for the adoption of the Constitution was that only by correcting all those defects of the Confederation which have been pointed out could order and prosperity be restored to the country. They said that the Constitution, being a series of compromises, could not please every one in all respects, but that it was the best that could be obtained under the circumstances. Their arguments appeared in a remarkable collection of eighty-five essays, called the "Federalist," written by Alexander Hamilton in company with John Jay and James Madison. In these were explained all the points of the Constitution, and to this day they remain the best exposition of the Constitution ever written.

The objections to the Constitution raised by the Anti-Federalists were many. In the first place, it was objected that it gave to the central government too much power, that state government and state liberty would be crushed out. The state was then as dear to the citizen as is the Union to us to-day. Patriotism was

then devotion to the state. The colonists had suffered so much from control over their state governments by an outside power that they were fearful of again putting themselves under a strong national government, even though of their own making. In warning terms it was declared it would be a government founded upon the destruction of the governments of the several states. They said, "Congress may monopolize every source of revenue, and thus indirectly demolish the state governments, for without funds they cannot exist." A recognition of these elements of state love and jealousy of the federal power is of the utmost importance in studying our history. We see them running through all our life as the main causes of division between political parties.

Another objection was that the Constitution contained no definite "bill of rights" recognizing and guaranteeing fundamental personal liberties, such as freedom of speech, liberty of the press, assurance against unjust arrest, the right to bear arms, the trial by jury in civil cases, etc. This class of objections was satisfied by the adoption of the first ten constitutional amendments.

It was also feared by those opposed to the ratification that inasmuch as the Constitution placed no limit to the number of successive terms which a President might serve, one man might become so powerful as to obtain practically a life tenure of office, and thus the government might degenerate into a monarchy. It was actually believed by many at that time that the Federalists had the intention of inviting some European prince to rule us as king. Patrick Henry cried, "We shall have

a king; the army will salute him monarch." Washington, by refusing to serve more than two terms, established a precedent which has proved as binding as a constitutional law. Popular as President Grant was, his friends failed, because of this precedent, to secure his nomination for a third term.

For nine months the struggle for ratification was fiercely waged in the states, but the Federalists prevailed. In June, 1788, the ninth state ratified, and adoption was assured. The Continental Congress fixed the first Wednesday in January for the election of presidential electors, the first Wednesday in February for the meeting of the electors and the election of the President, and the first Wednesday in March, — March 4, 1789, for the inauguration of the President. March 4 has ever since been fixed as the day for the inauguration of our Presidents. Owing to a delay in the assembling of the new Congress, however, Washington was not in fact inaugurated, nor our new government put into actual operation, until April 30, 1789.

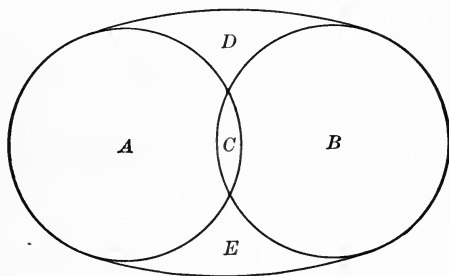
Thus was founded our present government, which has stood the test of more than a century. At its adoption there were thirteen states, now there are forty-five. The inhabited area was then the narrow strip between the Atlantic Ocean and the Alleghany Mountains, with a population of scarcely three millions. Now the United States stretches three thousand miles, from ocean to ocean, and contains a population of nearly seventy million souls.

CHAPTER II

THE DISTRIBUTION OF GOVERNMENT POWERS IN THE UNITED STATES

Distribution of Powers. — The preceding chapter will largely explain the principle upon which our present government was founded. This was to diminish as little as possible the powers of the states, and yet to give to the central government sufficient authority to control matters of national interest, and, if necessary, to enforce obedience of the states as well as of their citizens, to the provisions of the Constitution.

The manner in which the various governmental authorities to which the American citizen is subject, are divided between the individual states and the United States, may be well illustrated by the following drawing:¹



¹ Adapted from Tiedeman's *Unwritten Constitution of the United States*, Chap. X.

The outer curve represents the totality of governmental powers.

Circle A : Powers delegated to the United States.

Circle B : Powers reserved to the states.

Segment C : Concurrent powers.

Segments D and E : Powers prohibited both to the United States and to the individual states.

It will be noticed that it is said that Circle A represents the powers "delegated" to the United States, while the Circle B represents the powers "reserved" to the individual states. Use is made of the two different words, "delegated" and "reserved" in the two cases, to indicate an important point. Our national or federal government is what is called a government of "enumerated" powers. That is, it possesses only those powers which are "delegated" to it, which are enumerated in the Constitution.

These federal powers may be either such as are expressly given by the Constitution or such as are implied in those which are expressly given : that is, implied as being necessary and proper to be exercised in order to perform the duties which are expressly laid upon the United States. We shall refer more fully to these implied powers in the next chapter.

On the other hand, the governments of the individual states are governments of "unenumerated" powers : that is, they have reserved to them, without their specific enumeration in the Constitution, all those powers which either are not placed within the sole and exclusive control of the central government, or are not specifically

prohibited to them. Thus, Amendment X of the Constitution says :

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

Thus an individual state may not coin money, or establish post offices and post roads, or regulate interstate commerce, because these are matters specifically given by the Constitution into the exclusive control of the United States. Nor may it enter into a treaty with a foreign state, nor pass a law impairing the obligation of contracts, for these are powers expressly prohibited to the states. On the other hand, the states need only show that a given power is not included within the two classes of those exclusively given to the United States and those expressly prohibited to themselves, in order to make good their claim of a right to exercise it.

In the last clause of Amendment X occur the words “are reserved to the states respectively, or to the people.” The phrase “or to the people” was inserted because in all of the states many of the powers the exercise of which is not prohibited by the federal Constitution, are nevertheless prohibited to their respective governments by their respective state constitutions, and, therefore, as being exercisable neither by the federal nor state authorities, are considered as reserved to the people. The powers thus prohibited by the state constitutions are very numerous in many cases, and we shall refer to some of them when we come to describe the state governments particularly.

Those powers which are prohibited by the federal

Constitution both to the individual states and to the national government are designated by the segments D and E in the drawing.

Certain of the powers which are given to the United States are given to it exclusively. That is, they are such that whether the national government chooses to exercise them or not, the states cannot use them. Such, for example, are the powers of naturalization, of issuing patents, and of regulating interstate commerce. But, in general, the mere grant of a power to the national government does not of itself imply a prohibition upon the state to exercise the same power. "The full sphere of federal powers may, at the discretion of Congress, be occupied or not, as the wisdom of that body may determine. If not fully occupied, the states may legislate, subject, however, to any subsequent legislation that Congress may adopt. It is not the mere existence of a national power, but its exercise, which is incompatible with the exercise of the same power by the states." (Cooley.)

Summing up, then, this analysis of the totality of governmental powers in the United States, we find :

First. — That there are certain powers which can be exercised neither by the national nor state governments. These include those prohibited to both by the national Constitution ; and those, which, though given to the states, are denied to their governments by their own constitutions.

Secondly. — That the powers of the national government consist of those expressly given, and of those implied in the exercise of those expressly given.

Thirdly. — That the individual state governments have any and all powers except:

1. Those exclusively given to the United States.
2. Those given concurrently to the United States and to the states, and actually exercised by the United States.
3. Those expressly prohibited to the states by the Constitution.
4. Those within the competence of the state, but prohibited to their governments by their respective state constitutions.

The foregoing is complicated, for a federal government, as we have before said, is by far the most complex of all political forms.

The first question, however, which will probably occur to one reading over the careful way in which the different duties are granted or prohibited to the national and state governments respectively, is: How are these various limitations of power maintained? Who is to decide, and what will happen if either the Congress or a state legislature should attempt to exceed its constitutional competence, and enact a law regulating a matter which is not subject to its control by the Constitution? The answer is comparatively simple. In any suit in law in which the application of a given law, whether enacted by a state legislature or by Congress, is involved, if there be any doubt as to its constitutionality, either of the parties involved may allege this as a reason why he should not be compelled to obey it, or have his rights determined by it. It then becomes the duty of the court to examine whether or not this claim

is properly made, and after a decision thereon the case may be appealed until a final opinion is obtained from the Supreme Court of the United States. If it is decided that the law is unconstitutional, the court declines to apply it to the given case, and, since it is practically certain that the court will refuse to apply it in any other similar case, the law is thus rendered null and void of any effect.

So also in any of the state courts, laws passed by the state legislatures may be rendered void as inconsistent with the constitution of the state by whose legislature they were enacted.

CHAPTER III

INTRODUCTION TO THE STUDY OF POLITICAL PARTIES IN THE UNITED STATES

A KNOWLEDGE of the nature of our federal government as given in the foregoing description is a prerequisite to an understanding of the principles upon which our political parties have been founded.

In the political history of our country since the adoption of the Constitution there have been ever present two great constitutional questions, in the conflicting answers to which we must seek the origin and creeds of our great political parties. If we can gain a proper conception of the character of these two questions we shall have taken a long step toward the understanding of the reasons for the conduct of the various opposing parties and the basis of the disputes arising between them. These have been the two questions: 1. What is the extent of the powers granted by the Constitution to the national government? 2. What is the real nature of our Union; and, arising under this problem, what is the extent to which the states are justified in opposing what they believe to be unconstitutional acts on the part of the national government and, can a state or states, as a last resort, withdraw from the Union? This chapter will be mainly devoted to an examination of these questions.

What are the legitimate powers of the United States government?

The United States government was the result of the union of thirteen independent colonies — a union voluntary on the part of the colonies, yet forced upon them by the evident need of some central power strong enough to enforce obedience at home and demand respect abroad. The determination of what and how many the national powers should be was the work of the Constitutional Convention. Of the difficulties of this task we have already spoken.

In forming a scheme for a central government there was the double necessity of creating a government strong enough to perform the duties for which it was established, and yet not so strong as to endanger the free self-government of the states. The delicate point to be adjusted was to give to the federal government only such powers as were necessary for the establishment of an effective national government, and, as far as possible, to retain in the states their full governmental powers; in other words, to harmonize federal strength with state sovereignty.

The fear exhibited by the states in the debates preceding the adoption and ratification of the Constitution of 1787, that the national government might become too strong at the expense of their own powers of government, was not set at rest by the compromises obtained in the convention, nor by the eleven amendments adopted soon after the inauguration of the new government. The reason for the continuance of this fear was that the Constitution was so worded that the

powers of the general government were not precisely determined.

The statement sometimes loosely made that a description of our government is contained in the Constitution, is apt to be misleading. The Constitution has served rather as a foundation upon which to build the government than as an entire framework. The Constitution was only a scheme in outline, which had to be filled in afterwards by legislation. For example, the Constitution makes no mention of how business shall be transacted by the legislature. Committee government in Congress owes its existence to no provisions of the Constitution. The only mention made in the Constitution of the Speaker of the House, to-day the most powerful officer in the legislature, is where it is provided that: "The House of Representatives shall choose their Speaker and other officers." All executive departments—the State, War, Navy, Treasury, Post Office, Interior, Justice, Agriculture, and Labor—have been created from time to time by acts of Congress. Regarding the structure and number of federal courts, the Constitution merely provides that: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Our elaborate system of district, circuit, and territorial courts rests, therefore, solely upon congressional enactments. So, too, the Constitution gives to Congress the control of territories, but does not provide how that control shall be exercised.

The framers of our Constitution were wise in not

attempting to specify more particularly than they did, the manner in which the several powers granted to the federal government should be exercised. They realized that they were forming a scheme that was to endure for many years, and that if it was to be capable of meeting the needs of a changing and rapidly growing country, it would have to be elastic, and contain within itself the power of adapting itself to new needs and conditions. To secure the beneficial execution of the powers granted, Congress was therefore given the power of selecting appropriate means. To have refused the grant of this power, would have been to attempt to provide by unchangeable rule for emergencies that could by no possibility be foreseen. Or, as Chief Justice Marshall has put it, "It would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances."

After enumerating the various particular powers given to the federal legislature the Constitution further says (Article I, Section 8): "And shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." This is the clause under whose authorization all those powers have been assumed, and functions exercised, which have made the United States government of to-day so different from that of 1789.

The general rule is, as has been said, that the United States government possesses only those powers granted

to it by the Constitution. But here, in the clause just quoted, is a general grant of all powers necessary or proper for carrying into effect any of the powers particularly granted. But how is it to be decided just what powers are necessary or proper for the accomplishment of this object? Naturally people have not been able to agree as to the powers that are constitutional or expedient as "implied" under the title of "necessary and proper," and this question has been largely instrumental in dividing the people into opposing political parties. There has always been a party, the members of which, favoring great powers for the states rather than for the federal government, have been "strict constructionists," and have advocated a close and narrow interpretation of this clause of "implied powers." From their desire to retain in the state governments as many powers as possible, they have been known as the "States' Rights" party. Opposing them has been the party of "loose constructionists," the members of which have held to a liberal interpretation of the Constitution, and have favored increase in the power of the federal government. There have never been, to be sure, political parties styling themselves "strict constructionists" and "loose constructionists," for these terms have been used not as titles, but as definitions of different principles of constitutional interpretation. But by whatever name they may have been known, there have been, during the greater part of our history, two political parties, one holding to the principle of strict construction and "states' rights," and the other to that of loose construction and federal power.

It is probably correct to say that in general the loose construction principle has been followed in determining the powers of the federal government. Certainly this was true during the first fifty years of our history, when the national government was in its formative period and undergoing its greatest development. John Marshall, who was the Chief Justice from 1801 to 1835, was one of the greatest jurists the world has ever known, and he was thoroughly impressed with the necessity of giving to the federal government ample powers for the performance of all those duties which naturally fall to a sovereign national state. Under his controlling influence a long line of decisions as given, supported by the soundest logic, whereby not only the supremacy of the national government over the state governments was declared in the most explicit and convincing manner, but rules were stated for interpretation of the powers of Congress which secured to that body all powers which a liberal construction of the Constitution would permit. In the famous case of *McCulloch vs. Maryland*, decided in 1816, the Supreme Court not only denied the right of the state to hinder in any way the operation of any organ of the federal government, but laid down the following liberal rule for determining the implied powers of Congress :

“We (the Court) admit, as all must admit, that the power of government is limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to means by which the powers it confers are to be carried into execu-

tion which will enable that body to perform the high functions assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. . . . Should Congress in the execution of its powers adopt measures which are prohibited by the Constitution; or should Congress under pretext of executing its powers pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake to inquire here into the degree of its necessity, would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

Under the beneficent protection of this rule, the powers of the national government have been extended in a multitude of directions. For example, says Judge Cooley: "Congress as a means to the collection of its revenues, provides for the seizure, sale, or confiscation of property; in its regulation of commerce, builds lighthouses and removes obstructions from harbors; in establishing post offices, prescribes the rates of postage, provides for the appointment of postmasters and other agents, for the free delivery of postal matter, and for the sale and payment of postal money orders, etc. But

whatever may be the power it exercises in these and other cases, it must provide against its being rendered nugatory, and its purpose thwarted, by enacting laws for the punishment of those who commit acts which tend to obstruct, defeat, or impair the force of their execution, or who neglect duties essential to the accomplishment of the ends designed." Thus arises an extensive criminal jurisdiction on the part of the United States.

Since the Civil War, the sovereign character of the national government and the extent of its implied powers have become so well settled that these questions are no longer greatly influential in the formation of national political parties. The political differences are now based almost solely upon financial and industrial questions.

The second fundamental question spoken of in the beginning of this chapter as underlying national politics is concerning the nature of our Union and the rights of state nullification and secession.

A full discussion of these questions cannot be here attempted, but that which can be done is to state in a few words just what their meaning is, and the points upon which they have turned.

The government of the United States is the judge of its own powers, for it is in its own tribunal, the Supreme Court of the United States, that the constitutionality of both state and federal laws is finally determined. More than once has a practical answer been demanded to the question, What is to be done by a state or states when, in their estimation, the national

government has transcended its powers and acted in an unconstitutional manner? Obedience, nullification, or, in the last resort, secession from the Union, have been the various alternatives that have offered themselves to the states, and different views as to the nature of our Union have sustained the propriety of these different proposals.

According to the nullification theory, the Constitution is held to be of the nature of a compact between the states. Inasmuch as any party to a contract has the right to refuse assent to any act not permitted by such agreement, it is argued that if the United States government attempts the exercise of powers not granted in the compact, the states have the right to interpose the "rightful remedy" of "nullification." That is to say, each state has the right to determine for itself when an unwarranted power has been assumed by the general government, and in such a case to declare the obnoxious law null and of no force within her own boundaries.

In considering the question of nullification, it is necessary to distinguish the theory or rather method of nullification propounded by Madison and Jefferson in the Virginia and Kentucky Resolutions, from that of Calhoun brought forward at the time of South Carolina's resistance to, and attempted nullification of, the tariff laws of 1828 and 1832. In the Virginia and Kentucky Resolutions of 1798, it was solemnly declared that the Alien and Sedition acts were unconstitutional, that the Union was a compact, and the states had the right to interpose the remedy of nullification; but open resist-

ance was not contemplated. By this theory, it was proposed to obtain the opinion of three fourths of the states that the acts were unconstitutional, and thus to "nullify" them after the manner of enacting a constitutional amendment. Until such nullification the laws were to be obeyed.

The Calhoun doctrine was somewhat different from this. According to this doctrine, any single state might order at once a suspension of the law within her borders, and not until three fourths of the states in national convention had overruled the nullification could the state be forced to obey the obnoxious law. To use Calhoun's own words, his theory was that "it belongs to the state, as a member of the Union, in her sovereign capacity in convention, to determine definitely, as far as her citizens are concerned, the extent of the obligation which she has contracted; and if, in her opinion, the act exercising the power in dispute be unconstitutional, to declare it null and void, which declaration would be obligatory on her citizens." The sum and substance of this was, to give to one fourth of the states the right, if they saw fit, to deprive the federal government, by misinterpretation, of every power intrusted to it, that is, to alter in effect the Constitution at will.

The right of secession follows logically from the theory of nullification if rigidly carried out. Federal laws are general in their nature, and if binding anywhere, must be binding everywhere. If, then, a minority of the states insist on their right of nullification, the federal government will be obliged either to admit that all acts of Congress are without force in a state,

unless it assents to them, or else it will be driven to the necessity of obtaining the enforcement of the law by arms. Such employment of force would be but the prelude to secession. Indeed, South Carolina, in her Ordinance on Nullification, declared that she would secede if the United States should attempt to enforce the collection of the tariff duties provided for by the acts in dispute.

According to the Unionist view, it is held that in no case has the individual state the right to resist the operation of a federal law, much less does it possess the actual power to pass a law affecting its relation to, or continuance in, the Union. This view is supported by an interpretation of the Constitution that denies to that instrument the character of a compact between the states. The constitutional theory of this school is that the national government was formed by the people as a whole, and not by the states; that the states accepted this government, but were in no sense parties to it as to an agreement. According to this view, the Union began with the first acts of resistance taken in common by the colonies, and was thus, in a sense, older than the state governments, which were not formed until after the Declaration of Independence. And even if it should be held that it was the states which gave in 1788 their consent to the Constitution, their consent was irrevocable. Two quotations from decisions rendered by the Supreme Court of the United States will make clear the arguments and theory of the Unionists.

Said Chief Justice Marshall: "The convention which promulgated the Constitution was indeed elected by the

state legislatures, but the instrument when it came from their hands was a mere proposal, without obligations or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might be submitted to a convention of delegates chosen in each state by the people thereof, under a recommendation of its legislature for their assent and ratification. This mode of proceeding was adopted, and by the conventions, by Congress, and by the state legislatures, the instrument was submitted to the people. They acted upon it in the only way in which they can act safely, effectually, and wisely on such a subject, by assenting in convention. It is true they assembled in their several states; and where else could they have assembled? From these conventions the Constitution derives its whole authority. The government proceeds directly from the people. The assent of the states in their sovereign capacity is implied in calling the convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their decision was final. It required not the affirmance of, and could not be negatived by, the state governments. The Constitution when adopted was of complete obligation, and bound the state sovereignties. The government of the Union, then, is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit." Also, as Chief Justice Chase said: "The union of the states never was a purely artificial and arbitrary relation. It began among the colonies, and grew

out of common origin, mutual sympathies, kindred principles, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the Articles of Confederation. By these the Union was solemnly declared to be perpetual. And when the Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained to form a more perfect Union. It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be more indissoluble, if a perpetual union, made more perfect, is not? But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence or of the right of self-government by the states. Without the states in union, there could be no such political body as the United States. Not only, therefore, can there be no loss of separate and independent autonomy to the states, through their union under the Constitution, but it may be not unreasonably said that the preservation of the states, and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. The Constitution in all its provisions looks to an indestructible Union composed of indestructible states."

A civil war of four years duration has decided the Unionist theory of our government to be the one under which the nation is to be governed. Whether or not, in point of fact, the nation was older than the states, and the Constitution not a compact, but an indissoluble

Union, will always remain a question to be discussed. The dispute turns upon a point that does not admit of final determination. We can only theorize. To maintain the view that the Union is older than the states it is necessary to show that the Continental Congress was of such a character, and its powers of such nature, that a true national government may be said to have existed before July 4, 1776, and, therefore, that the Declaration of Independence and the consequent transformation of the colonies into states were not the result of the individual action of separate colonies, but of the whole people united in a nation. And, following from this, that the states were never out of the Union, but that the individual colonies became states only as belonging to the United States. Consequently, that the theory of a "compact" between the states and the United States is untenable, for at the time the United States was born, the states did not exist.

To maintain the "compact theory" it is necessary to show that the "Continental Congress" had no properly delegated national powers, and to it the character of a national government could not fitly be applied, and that the colonies when they separated from England remained independent of one another, because as colonies they had been independent. Therefore, that the initial clause of the Preamble to the Constitution, "We, the people of the United States" did not refer to the people of the United States in their collective capacity, but to the people of the several states.

These opposing views of the character of our Con-

stitution have been stated not with the idea of proving either of them to be correct, but solely to indicate the lines along which political parties have fought their battles.

To complete the statement of the underlying causes and fundamental principles that have directed the course of our national politics, it is necessary to give at least some short account of the natural causes that have operated irresistibly to divide the North and the South in their political thoughts and actions.

Why is it that slavery flourished in the South, but languished and was gradually abolished in the North? Why is it that the stronghold of the states' rights doctrine of nullification and of secession was in the South, and the citadel of the Unionists in the North? Why is it that to-day the debate between high and low custom duties is, to a very considerable extent, a discussion between the New England and Middle States and the Southern States?

To all these questions a very satisfactory answer can be found in the different physical characteristics of the North and South. The nature of the soil and climate, as well as the character of the settlers, predetermined for the Southern colonies an agricultural character, and for the colonies of the North a commercial and industrial character; and already by the end of the eighteenth century we find in them a marked difference in political and social life.

From the very start, the South, favored by a mild climate, rich soil, and broad, low-lying valleys, developed an agricultural life. Slavery was introduced at

an early date, and flourished, the warm climate being congenial to the negro and the rude manual labor of the field suited to his meager capabilities. The result of these influences was to develop in the South a system of large ill-worked manors or estates. The predominance of slave labor discouraged the immigration of free labor, and the South remained comparatively thinly settled.

In the North, an indented coast with many good harbors, rugged soil, and a wintry climate, encouraged the development of a commercial and manufacturing life. Slave labor there proved itself scarcely profitable, neither the climate nor the nature of the work required being suited to the constitution and ability of the African. As compared with the South, the North soon became thickly settled, and largely as a result of this, adopted the small area of the town or township as its most important unit of local government, instead of the larger area, the country, used in the South. This essential difference in the system of local government in the North, from that of the South, has remained unchanged to this day, and has exercised great influence upon the political habits of the people of these two sections.

At the time of the adoption of the Constitution, these differences between the Northern and Southern colonies were not so great as they were soon to become. As contrasted with the North, the agricultural character of the South was already marked, but the designation of these two sections as "free" and "slave" states had not yet come into use. It was the remarkable develop-

ment of the cultivation of cotton, consequent upon the invention of Whitney's cotton gin in 1798, that gave the tremendous impetus to the increase of slavery in the South. While prior to the introduction of this machine scarcely a single pound of cotton could be separated from the seed by a man in a day, Whitney's gin made it possible for him to prepare for market three hundred and fifty pounds per day. The nature of the cotton plant rendered it peculiarly fitted to the climate and soil of the South, and the ease with which it could be cultivated and prepared for market made the application of slave labor extremely profitable. In 1789 many of the Southern states exhibited evidences of a desire and intention ultimately to abolish slavery, but from this time on we hear nothing more of this. After 1800 the number of slaves increased rapidly. The census of 1790 showed in the Southern colonies 650,000, while that of 1820 showed the number to be over 1,580,000. From 1800 to 1865 the political life of the South is largely explainable by the interest of its people in, and devotion to, the institution of slavery.

The promptness with which, irrespective of party affiliation, the people of the North assumed the anti-slavery attitude and those of the South placed themselves under the proslavery banner, at the time of the Missouri contest in 1820, shows the extent to which these two sections of the United States were already divided upon this great question. The South, retarded in its growth as compared with the North, by the employment of slave labor, already exhibited an example of arrested development, and her politicians saw that

if the balance of power between the slaveholding and the non-slaveholding states was to be maintained, a wider field for the extension of their favorite institution would have to be provided. It is in the light of this motive that the desire of the South for the annexation of Cuba and Texas, even at the expense of war with Mexico, is to be interpreted. The compromise of 1850 satisfied the demands of slavocracy for a time, but only for a time. In 1850 the South again demanded, and obtained concessions. It required a civil war to demonstrate to us the futility of endeavoring to avert by compromise the conflict that was irrepressible between the North and the South so long as slavery existed in the one, and was reprobated in the other.

The different attitudes assumed at the present day by the North and South in regard to the tariff question are explained by the difference in the industrial life of these two sections. The North is essentially a manufacturing center, and, as such, demands high import duties as a protection to its manufacturers and merchants. The South is, as a whole, agricultural, and favors low duties with the idea of thus extending foreign trade, and affording a larger market for the sale of her raw products. A striking proof of the influence of the industrial life of a section in determining its attitude toward the tariff is seen in the change of front of Massachusetts after 1824 from free-trade to protection, this change being wholly due to the predominating influence acquired by her manufactures over her commerce and agriculture.

CHAPTER IV

CONGRESS: ITS ORGANIZATION

WE are now prepared to enter upon a more detailed description of the governmental organs which have been created for the performance of the various duties which the national Constitution has laid upon our federal government. As in all modern constitutional governments, the general principle has been followed of separating the legislative, executive, and judicial powers, and vesting their exercise in distinct organs, or departments, as they are called. It will be found that this distinction between the three departments has not been followed in all cases with exactness, but in general this has been the principle.

The present chapter will be devoted to a description of the organization of the national legislature, or Congress, as it is called. Its practical operation, and its specific powers, will be given in separate chapters. We shall here be concerned simply with its composition and organization.

The composition of Congress is determined by Article I of the Constitution. The name Congress is a collective one and applies to the two legislative bodies, the House of Representatives and the Senate, when taken together and considered as a single organ for enacting national laws.

Section I of Article I of the Constitution reads: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

House of Representatives. — The House of Representatives, or lower or popular branch of Congress, as it is variously called, is composed of Representatives chosen every second year by the people of the several states. The number of Representatives given to each state is in proportion to its population, as determined by the last national census. Before the abolition of negro slavery, every five slaves were considered the equivalent of three free persons for the purposes of apportioning Representatives. Indians who still retain their tribal relation have never been counted at all.

It is required that those who elect the Representatives shall have the same qualifications as are required of the electors of the most numerous branch of the state legislature; and, since these qualifications are determined in each case by the individual state, it follows as a result that qualifications of electors for national Representatives are determined not by the national government, but by the individual states.

The only restrictions placed upon the states in this matter by the Constitution are: First, that the right of citizens of the United States shall not be denied or abridged by any state on account of race, color, or previous condition of servitude. This restriction was imposed by the Fifteenth Amendment, which was adopted in 1870. Secondly, this amendment provides that if the right to vote be denied to any of the adult

male inhabitants of any state for any other reason except for participation in rebellion or other crime, then the number of Representatives apportioned to that state shall be reduced in the same proportion that the number of persons thus disenfranchised bears to the whole number of adult citizens of such state.

At the time of the adoption of the Constitution in 1789, the right of voting was greatly restricted in most of the thirteen states, but since then the right of suffrage has been steadily extended, until now, in every state, a vote is given to practically every adult male citizen. The only restrictions which still exist are that in one or two instances a small property or educational qualification is imposed.

In order to be qualified for election as a Representative it is necessary that one should be twenty-five years of age, seven years a citizen of the United States, and, when elected, an inhabitant of the state from which elected.

At the time of the adoption of the Constitution there was one Representative for every 30,000 population, or sixty-five Representatives in all. Now, so greatly has the population increased, that, though the ratio has been raised to one for every 173,901 population, there are in all three hundred and fifty-six Representatives.

Every state has at least one Representative, though its total population may fall short of the 173,901. Each territory is allowed to send to the House of Representatives one Delegate, who has the right of speaking, but not of voting. When by death or resignation, a vacancy occurs in the representation from any state,

the Governor of that state may order a new election to fill such vacancy.

Representatives, though elected from particular districts, are supposed when elected to regard the interests of the nation as a whole when exercising their lawmaking duties, rather than those of the particular section from which they are chosen. As Judge Cooley says: "They bring with them their knowledge of local wants, sentiments, and opinions, and may enlighten Congress respecting these, and thereby aid all the members to act wisely in matters which affect the whole country, but the moral obligation to consider the interest of one part of the country as much as that of another, and to legislate with a view to the best interests of all, is obligatory upon every member."

The presiding officer of the House¹ (termed the Speaker) as well as its other officers, such as Sergeant-at-arms, Reporters, Clerks, Doorkeepers, Chaplain, Paymaster, Postmaster, etc., are elected by itself at the beginning of each session.

As all Representatives are chosen at the same time and for the same term, there is an entirely new House every two years, except that many of the members of the old House are reelected for the new. The election of Representatives occurs every two years on the Tuesday after the first Monday in November, and thus, as we shall see, every alternate congressional election falls upon the same date as that of the presidential electors.

Each state divides itself into as many congressional

¹ The House of Representatives is very commonly spoken of simply as the "House."

districts as it has Representatives apportioned to it, and one Representative is voted for in each such district. It is not legally necessary that a candidate should reside in the district from which he is elected, but it is the almost universal practice for this to be the case.

The privilege which each state has of electing its Representatives in the manner in which it sees fit has led, in some of them, to a party expedient termed "gerrymandering," by which the party in power is enabled to secure more than its just proportion of members of Congress. Gerrymandering secures this result in the following way: Instead of dividing the state into congressional districts of a comparatively regular form, these districts are made to wind in and out in most irregular ways so as to crowd as many of the hostile votes as possible into one or two districts, which would be certain to be hostile anyway, and thus to deprive other districts of those votes, with a result that the party contriving the gerrymander will be able to carry those other districts for itself. The same result is also sometimes obtained by adding to a district where the votes are equally divided some small locality in which the majority of friendly voters will be sufficient to turn the scale. Thus, if the party in power have in one district a majority of 5000, while in a neighboring district its opponents have a majority of 4000, a section from the former can be added to the latter, and a hostile section from the latter given to the former, so as to leave the party in power still with a majority of 500 in the first district and yet give also a majority of 500

in the second, and thus elect Representatives from both districts. In order to obtain these results it has often been necessary, as before said, to make congressional districts of an absurdly irregular shape. In the Congressional Directory of the 1st Session, Fifty-fourth Congress (corrected to April 22, 1896), maps are given showing the districting of all the states, which exhibit in a striking manner the ingenuity displayed in so grouping areas as to give the largest possible number of representatives to the party by whom the grouping is done.

The practice of gerrymandering is also used in many states in the arrangement of districts for the election of members of their state legislatures.

Proportional and Minority Representation. — But even where there is a division of the state into regular districts, there is often great complaint that the party in the minority is not sufficiently represented. Ordinarily that party which has the majority of votes in any electoral district will elect not simply its due proportion of the officers to be selected in that district, but will elect all of them. That is, if it have but a majority of one in each congressional district, it will elect every Representative from the state, whereas, as a whole, it may represent but slightly over one half of the people. In other words, the minority, however large, will not be represented at all. For example, in 1892, Iowa with 219,215 Republican votes and 201,923 Democratic votes, elected ten Republican Congressmen and but one Democrat. For nearly forty years after her admission as a state Kansas did not have a single Democratic Representative in Congress, although the Democrats

polled from one third to two fifths of the vote of the state during that time.

To a great many people such a condition of affairs as these figures exhibit seems not only unfair but unwise. They say that if the minority were represented in proportion to their vote, the presence in the legislature of their representatives would be, though not controlling, a check upon the majority; that there would thus be greater opportunity for the minority to get a full discussion of their views, and that there would not be, for these reasons, so much danger of oppressive and radical party measures.

To bring about this reform several schemes of minority, or, as it is also called, proportional representation, have been elaborated and urged for introduction in this country. In Illinois one of them has actually been in operation for more than twenty years in the election of members for the legislature. The method there in operation is one of the simplest, and consists, first, in the uniting of several legislative districts, and the election of three or more Representatives from each of these consolidated districts; and secondly, in the giving to each voter the right to cast as many votes at each election as there are Representatives to be elected from his district. These votes may be distributed one apiece to each of the candidates, or the voter may cast two or all of them for a single man.

Under this scheme a party having a bare majority can always elect two candidates out of three, and if a minority have more than a fourth as many votes as their opponents, its members can, by combining their

votes on one individual, always elect him. This plan also favors independence in voting, since, if a voter has a preference for one of the candidates of his party over another, he can give all his votes to him and leave the undesirable candidate without any; whereas, according to the ordinary method of voting, where one Representative is elected from each district, and only one nomination made by each party, if an unfit man is put up by his party, the voter has no alternative but to vote for him or to assist in the election of his opponent.

The Senate.—The Senate, or upper branch of the national legislature is a much smaller body than the House of Representatives, and is based upon a different principle. It is composed of two Senators from each state. Thus, while the “national” idea appears in the House, its members being apportioned according to population, the Senate represents the “federal” idea, according to which the states are represented as such and have an equal voice irrespective of population. This distinction is further emphasized by the fact that while the Representatives are elected directly by the people, the Senators are elected by the state legislatures, and thus appear rather as delegates of the states than of the people. It will be found also that the Senate is differentiated from the House in that it participates in the performance of a number of executive acts with which the House has nothing to do.

At the beginning, the Senate consisted of twenty-six members, there being but thirteen states in the Union. At present, there being forty-five states, the number of Senators has increased to ninety.

Senators are elected for a term of six years, but as they are not all elected at the same time, one third being selected every two years, the composition of the Senate is much more stable than that of the House. In this way it very often happens that while one political party is in the majority in the lower branch of Congress, another is in the ascendancy in the upper. Another important fact which arises from the circumstance that the Senate is a continuous body, while the House is not, is that all measures which are passed through some of the stages of legislation, but have not actually completed their course and become law, utterly fail in the House at the end of the two-years term, and have to begin again at the beginning in the new Congress; while in the Senate their status is not lost and they retain the position at the beginning of a new session which they had attained at the end of the preceding term.

Election of Senators. — The provisions of the Constitution regarding the election of Senators are as follows: "The Senators of the United States shall be composed of two Senators from each state, chosen by the legislature thereof for six years; and each Senator shall have one vote." "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

Until 1866 this matter was left entirely to the states, as permitted by the section of the Constitution just given. In that year an act was passed by Congress

regulating the election of Senators by the state legislatures. By this act it was provided that the legislature of each state, chosen next preceding the expiration of the term of either of their Senators, shall, on the second Tuesday after assembling, elect a Senator in the following manner: Each House shall by open ballot (*viva voce*) choose some man for Senator, and he who receives a majority of the total number of votes cast in such House is entered on the Journal of that House. At noon on the following day the members of the two Houses convene in joint assembly, and the Journal of each House is then read, and if the same person has received a majority of the votes of each House, he is declared duly elected Senator. But if not, the joint assembly then proceeds to choose by a *viva voce* vote of each member present a person for Senator, and the person who receives a majority of all the votes of the joint assembly—a majority of all the members elected to both Houses being present and voting—is declared duly elected. If no person receives such a majority on the first day, the joint assembly meets at noon on each succeeding day during the session of the legislature and takes at least one vote until a Senator is elected. In case of a vacancy occurring in the Senate during the recess of a state legislature, the Governor of the state appoints a man to fill the place, his appointee holding until a successor is chosen in the above manner by the legislature when it meets.

There are many who think that this method of electing Senators by state legislatures, instead of directly by the people, is inadvisable, and that the Constitution

should be amended so as to provide for their election in the same manner as Representatives. The arguments which they advance are as follows :

In the first place, they say that much valuable time of the state legislatures would be saved, for it is of the most common occurrence for disagreements to arise between the two Houses of the state legislatures upon the man to be selected, and thus, sometimes, months are spent before an agreement is reached and the legislatures are permitted to resume their proper lawmaking functions.

In the second place, it is argued that the assignment of this duty to the state legislatures necessarily leads to an undesirable confusion of state and national politics. There is no rational ground for electing the members of a state legislature except upon their known views as to matters of local state interest. Yet, as a matter of fact, because they have this senatorial electoral function, in very many cases the controlling reason for their selection is their known preference for, or antagonism to, this or that prospective candidate for the Senate. Thus legitimate state issues are unnecessarily subordinated to national politics.

Thirdly, and possibly most important of all, it is held that this method of selection leads to corruption. It is believed that in case a wealthy man desires to be Senator and is not above bribery, it is possible for him so to influence the comparatively few members of a state legislature as to secure his selection. Whereas, if his election were by the people, this would be impossible.

The qualifications for a Senator are that he shall be

thirty years of age, that he shall have been nine years a citizen of the United States, and an inhabitant, when elected, of the state from which he is chosen.

The Senate selects all its own officers, except its President, who according to the Constitution must be the Vice President of the United States. The Vice President has no vote except in case of a tie. Each House is the judge of the election returns and of the qualification of its members; that is, as to whether the persons claiming membership have been properly elected, or have the necessary qualifications prescribed by the Constitution. Thus at every session of the House, and sometimes in the Senate, there are numerous contested elections to be decided. All such cases are fully investigated and decided by a majority vote of the House or Senate. Too often, however, this vote is dictated by party prejudices rather than by a judicial estimate of the evidence offered. In England, such contests, as being essentially of a judicial character, are given primarily to the courts, only the final ratification of their decisions being reserved for Parliament; but almost without exception the decisions of the court are accepted. The introduction of such a method in this country would seem to be very desirable. Not only would the time of Congress be saved, but far greater justice would be obtained for the contestants.

A record of the proceedings of both Houses of Congress is kept and printed in two publications termed the "Congressional Record" and Senate and House "Journals." The Journals are very brief and analogous to the minutes of the meetings of any ordinary

society. They contain a record of the introduction of bills, resolutions, petitions, etc., the names of members voting on all subjects when the ayes and nays are demanded, all messages from the President of the United States to either House and the inaugural addresses, a brief statement of the subject of every report or communication from the executive departments, and lists of attendance of members. They are issued semi-monthly, and in bound form at the end of each session. They have a subject index, and are thus very useful in tracing the course of a bill in its various stages from day to day until it becomes a law. Besides the ordinary legislative Journal, the Senate keeps an executive Journal of its proceedings when in executive session. This Journal is not published, but kept secret, though, after all need of secrecy is past, those of former years are printed and published.

The Congressional Record is a *verbatim* report of all that takes place in Congress, printed from the shorthand notes of the official reporters. It is printed daily at the government printing office while Congress is in session.

All laws enacted by Congress are termed "United States Statutes at Large." In 1873 all laws of a permanent nature then in force were gathered together in a single volume reenacted by Congress, and in this form are known as the "Revised Statutes." Since then, various supplements have been published by which the Revised Statutes are made to include all laws in force nearly to date.

All laws for raising revenue must, according to the

Constitution, originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills. Though it is not constitutionally necessary for all bills appropriating money to originate in the House, it is customary for them to do so.

The salaries of Congressmen are fixed by Congress itself, and have varied from time to time. At present they receive \$5000 per annum and 20 cents per mile (termed mileage) of necessary travel to Washington and return to their respective homes. The Speaker of the House receives \$8000.

During their attendance at Congress, or while going from or returning to the same, Senators and Representatives are exempt from arrest except when accused of treason, or felony, or a breach of the peace. This exemption is based upon the principle that, save in serious cases, the people are not to be deprived of the benefit of the services of the Representatives whom they have elected. In order to secure greater freedom of debate and expression of personal opinion, the Constitution also provides that no member shall be held responsible, that is, liable to prosecution for libel or slander for anything which he may have said in any speech or debate in his House.

CHAPTER V

CONGRESS IN OPERATION

CONGRESS meets each year on the first Monday in December. Each Congress lasts two years, that is, during the time for which each new set of Representatives is elected, and consists of two sessions, a long and a short one. The long session lasts from the time when Congress meets in the second December after the November in which the Representatives are elected, until some time in midsummer. The short session lasts from the time when Congress meets again, in the following December, until the next fourth of March at noon, at which time the term of office expires for all of the members of the House and for one third of the Senators. The long sessions end in even years (1894, 1896, etc.), and the short sessions in odd years (1895, 1897, etc.). Extra sessions may be called at any time by the President of the United States for the transaction of urgent business.

From the above it will be seen that the old Congress remains in session until the fourth of March after the November in which the new House is chosen, and thus, unless an extra session of Congress be called, the newly elected members do not take their seats until thirteen months after they are chosen.

This would seem to be a condition of affairs which should be changed, for it has frequently happened that during that period the political opinions of the people have changed, and thus, when the time has come for such members to enter upon the performance of their legislative duties, they no longer represent the opinions of those by whom they were elected.

Committee Government. — An immense amount of business must necessarily be transacted by a Congress which legislates for a nation of nearly seventy millions of people, inhabiting a territory of over three and a half millions of square miles. The Constitution which created Congress and conferred upon it its powers of legislation, makes no provision for the method by which these powers shall be exercised. Congress has, therefore, itself developed a very elaborate set of rules of procedure, whereby its enormous tasks may be performed.

Lack of time prevents the separate consideration by the whole Congress of every matter which comes before it. To provide a means by which each subject may receive investigation and consideration, the plan is followed of dividing each House of Congress into a large number of committees. Each committee busies itself with a certain class of business; and bills, when introduced, are referred to this or that committee for consideration, according to the subjects to which they relate. Thus, for example, affairs relating to Washington are handed over to what is known as the District of Columbia Committee, while appropriation bills are given to the Committee on Appropriations, etc.

These committees consider these bills carefully, and frequently take the testimony of outside persons in order to discover the advisability of the measure which they propose.

The regular course through which a bill has to go before becoming an act or law is as follows: On Mondays there is a roll-call of the states, and members may then introduce in the House or Senate any bill which they desire. These bills are then referred by the presiding officer to appropriate committees. These committees, meeting in their own separate rooms, debate, investigate, and, if necessary, ask the opinion of outside persons. After such consideration the bills are reported back to the House or Senate. Very few bills reach this stage, however, for the committees do not have time to report any save the more important ones, and thus the majority of them disappear forever when once referred to a committee, or, as the saying is, are "killed in committee."

If a bill receives the approval of the committee it is favorably reported to the Senate or House as the case may be, accompanied by a report advising its passage. If the bill is not approved by the committee to which it has been referred, an unfavorable report is made. Bills are not often passed after such an adverse report. The reports which accompany the bill, giving the reasons for the action proposed by the committee, are printed, often at great length. When reported back to the House in which it was introduced, a bill is voted upon and amended if so desired, and, when passed, is sent to the other House. If passed there, it is ready

for the President's signature. If vetoed, the bill is lost, unless passed over the veto by a two-thirds vote of both Houses. The Constitution gives the President ten days to deliberate as to whether he will give his approval to a measure which has been sent to him. If the bill is not returned by him to Congress within that time, it becomes a law without his signature. If, however, Congress adjourns before the ten days expire, and before the given measure has been returned to it, the measure is lost. This is termed a "pocket veto."

Frequently, one House, while not wishing to defeat a measure sent to it by the other House, may desire to change it in some particulars. If this is done, the bill, as amended, is sent back to the House from which it came, and if these amendments are agreed to by it, it is sent to the President for his approval. Thus by repeated amendments a bill may pass several times to and fro between the House and the Senate.

Important bills, as, for example, appropriation bills, which it is imperative to have passed in some shape or other, are referred, when the two Houses are unable to agree, to what are called "Conference Committees" composed of members from both Houses. In these committees a compromise is effected, and the bills as then reported are almost always accepted by both Houses.

The Senate is now divided into between fifty and sixty committees, but the number varies from session to session. The principal committees are those on, (1) Foreign Relations; (2) Privileges and Elections; (3) Judiciary; (4) Commerce; (5) Finance, and (6) Appro-

priations. The Senate selects the members for its different committees by ballot, though it is pretty well determined beforehand how each committee shall be constituted. A committee is always composed of an odd number of members, and both political parties are always represented, though the majority is, in almost all cases, from that body which is in the ascendancy in the Senate.

The House of Representatives is organized into sixty or more committees, ranging in the number of their members from thirteen down. As regards party representation upon them, their constitution is similar to that of the Senate committees. The Committee on Ways and Means, which is concerned with proposals for raising revenue, is by far the most important. Other important committees are those on (1) Elections; (2) Appropriations; (3) Judiciary; (4) Manufactures; (5) Commerce; (6) Labor; (7) Rules, etc.

Every Representative serves upon at least one committee, and most of them upon several. Unlike the custom in the Senate, the Speaker has the sole power of appointing its committees in the House. This, together with his almost supreme control of the order of debate, and of what matters shall be considered in the House, makes him next to the President, the most powerful federal official.

Amount of Work Done. — The amount of work ordinarily done by a Congress during its two sessions may be judged from the record of the Fiftieth Congress, which was as follows: There were 4000 bills introduced in the Senate and 145 Senate joint resolutions. Of this num-

ber 1127 bills and joint resolutions passed in the Senate and 554 were either postponed indefinitely or referred to the Court of Claims, so that the total number on which final action was taken by the Senate was 1681. Of these 667 obtained the approval of the other House and were sent to the President, and 591 of them became laws, the number of vetoes being 76. This number of vetoes was exceptionally large, and for the most part indicated the President's disapproval of private pension claims.

The House of Representatives passed 1561 House bills and sent them to the Senate, and the Senate passed 1347 of them. The House passed 56 joint resolutions, and the Senate assented to all of them but 8. The House therefore passed in all 2284 bills and the Senate 2522.

The first session of the Fifty-first Congress was, with one exception, the longest ever held. During that session there were introduced in the House 12,402 bills and joint resolutions; and in the Senate 4570, making the total 16,972. The total number of acts passed was 1335.

In the Fifty-fourth Congress, over 14,500 bills and resolutions were introduced, of which 948 were passed and became laws. When the Congress expired, over two thousand measures were still upon the calendars of the House. The rest were in the committees, but unreported.

Control of Debate. — Notwithstanding that each House of Congress has divided itself into fifty or more smaller bodies, and reserved to itself as a whole only a consideration of their reports, time is so urgent that all debate

in the House of Representatives, except in a very few instances, is limited to a few minutes for each member. On certain days an hour is given to what are called bills on the calendar. Each committee is then called in turn, and the chairman thereof recognized. He determines what bill from his committee shall be considered and who shall be allowed to speak for the brief time which is given for its discussion. This of course gives to these chairmen a great deal of power in controlling legislation. In fact it will be found that all of the time of the House is practically in the hands of these chairmen or of the Speaker. No one is allowed to speak or to move that any certain measure be taken up for consideration unless recognized by the Speaker; and this recognition does not depend, as one might think, upon being the first to rise and claim recognition, but entirely upon the arbitrary choice of the Speaker, who, guided generally by the known wishes of his party, but often also by his own personal judgment, recognizes whom he chooses, irrespective of who may first demand recognition.

Certain of the committees, because of their importance, are privileged committees and may report at any time. The most important of these privileged committees is that on Ways and Means.

Notwithstanding the limitation of debate few except the most important bills ever reach consideration in their regular order. There is a method, however, which is called "suspension of the rules," whereby, by a two-thirds vote, a bill may be taken up and passed out of its regular order. The motion for the suspension of the rules may be made only on the first and third Mondays

of each month, and during the last six days of each session. Unanimous consent will also at any time permit a bill to come up for discussion out of its turn.

Filibustering. — This is the term used to describe the use of obstructive and dilatory tactics by those in a minority, in order to prevent a vote upon a measure to the passage of which they are strongly opposed. Being outnumbered, those of the minority see that if a bill once gets to a vote they cannot stop its passage. Therefore, to prevent this, they speak as long and as often as the rules will permit. One after another they raise frivolous points of order, which require time for discussion, make motions to adjourn, demand that there be an individual vote on these motions, or refuse to vote at all and thus attempt to prevent a quorum.

It is the theory of a free government and of a free legislature that those in the minority shall be entitled to be heard, as well as those in the majority. But when this right is abused, and it becomes evident that debate is being continued for purposes other than those of advancing new arguments for the persuasion of opponents, and when thereby important legislation is delayed, then the majority may refuse to consent to further discussion, or to entertain obstructive motions, and may proceed forthwith to vote upon the measure pending.

In order to do this in the House of Representatives the power has been given to the Speaker of closing the debate whenever a majority demand what is called "the previous question." Thus, House Rule No. 17 declares: "There shall be a motion for the previous

question, which, being ordered by a majority of members present, if a quorum, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered." This mode of stopping debate is often known by the French word "*Clôture*." The existence of this rule places it entirely within the power of a simple majority to pass any measure it pleases without giving any opportunity whatever to the minority to be heard; but the American sense of fairness and justice prevents this right from being often abused.

The Senate being a much smaller body than the House, much more time may be placed at the disposal of each of its members; and as yet it has not been forced to give to its presiding officer such extensive powers of recognition and of regulating debate as have been given to the Speaker of the House. Nor has it found it necessary to give to the majority that enormous power of checking debate by means of the previous question. But it is not certain that the time has not now come when this check upon the minority should be introduced, as suggested by the extent to which filibustering was carried in the special session which was convened by President Cleveland in 1893.

Caucus.—There is still one feature of congressional government that demands explanation, and that is the caucus. A caucus is the meeting of the members of one party in private for the discussion of the attitude which the members of that party shall take upon points which are expected to arise in the legislative halls. Thus, in the Senate caucus is decided who shall be

members of the various committees. In these meetings is frequently discussed whether or not the whole party shall vote for or against this or that important bill, and thus its fate is practically decided before it even comes up for debate in Congress. Before each Congress meets, caucuses are also held to decide who shall be the party nominee for the speakership.

Executive Duties of the Senate.— Besides the performance of its ordinary legislative duties as a branch of the national legislature, the Senate has imposed upon it by the Constitution two classes of executive duties, in the performance of which it acts in connection with the President and independently of the Lower House.

These duties consist, first, in the confirmation of certain of the appointees of the President to office; and second, in the ratification of treaties.

The Constitution provides that the President "shall have power by and with the consent of the Senate to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the consent of the Senate, shall appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise herein provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President, in the courts of law, or in the heads of departments."

In the next chapter it will be found that appointment

to office of the great majority of federal officials has been vested by law in the President alone, in the heads of departments, or in the courts of law, and hence does not need confirmation by the Senate. All of the highest positions, however, numbering over four thousand, still require the senatorial consent. This consent is indicated by a simple majority vote, differing in this respect from the ratification of treaties, for which a two-thirds vote is necessary.

All of the preliminary negotiations of a treaty are carried on by the President, acting usually through his Secretary of State, or through our ambassador or minister to the foreign state with whom the treaty is being arranged. Not until the matter has assumed definite shape, and the treaty has been reduced to a formal written statement, is it sent to the Senate by the President, accompanied by his recommendation that it be ratified. The Senate may ratify it or reject it, or amend it and then accept it; in the last case, however, the amendments must be accepted also by the President and by the foreign state or states concerned.

In order to become fully operative a treaty has to pass through the following five stages:

1. Reduction to written statement, signing by the Secretary of State for the President, and submission to the Senate.

2. Ratification advised by the Senate.

3. Ratification by the President.

4. Exchange of ratifications with the foreign power.

5. Proclamation by the President.

The treaty thus proclaimed becomes fully binding as

law upon all citizens of the United States, and operates as a repeal of all existing laws which may be contrary to its provisions.

When sitting for the performance of executive duties, the meetings of the Senate are secret, and all members and employees are sworn not to make public what transpires until the bar of secrecy is removed. Notwithstanding this, it has been found almost impossible to keep these sessions wholly secret, and, as a rule, the newspapers give fairly good accounts of them.

Impeachments. — One purely judicial function is given to the Senate,—the trial of all federal officials when formally charged with misconduct in office. The presentation of these charges is by the House of Representatives. The provisions of the Constitution which regulate this are as follows:

“The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.”

Since the adoption of our Constitution there have been seven impeachment trials before the United States Senate, of which only two have resulted in convictions.

Of these seven, three were of District Judges, Pickering, Peck, and Humphreys, of whom the first and the last named were found guilty and dismissed from office. A Justice of the Supreme Court, Samuel Chase, a Secretary of War, William K. Belknap, a Senator, Blount of Tennessee, and a President of the United States, Andrew Johnson, were the occasion of the other of the four impeachment trials, which resulted in acquittals. President Johnson escaped condemnation by but a single vote.

In order that a public officer may be liable to impeachment it is not necessary that he shall have committed an actual crime. Any improper exercise of the authority of the government, whether or not defined by the law as a crime, can be held as constituting a sufficient ground for impeachment.

Problems Connected with Congressional Legislation. — The problem of so controlling debate as to give to the minority a chance to be heard, and yet to enable the majority to prevent obstruction and filibustering, has already been spoken of. Besides this problem there are other serious questions regarding evils which exist in our present method of congressional legislation. First, there is the evil of extravagance in the spending of the people's money. This extravagance consists not so much in over-large appropriations for the legitimate objects of government as in appropriations for unnecessary and improper purposes. Chief among these are undoubtedly many of the items embodied in the River and Harbor Bills, in which appropriations are made for the improvement of rivers and harbors throughout the country. It

is a well-known fact that many of these items are inserted not so much because there is a real need for the improvements described as to provide for the expenditure of money in the districts of the Congressman by whom the items have been suggested and urged. Many of the private bills for granting pensions to those who have been refused relief by the regular pension authorities are also undoubtedly unmeritorious.

Secondly, and largely connected with the foregoing, is the evil of "log-rolling." This is the term used to designate that mode of securing the passage of a bill by which one Congressman says to others that if they will not object to the passage of a particular bill in which he is interested, he will not stand in the way of the measures desired by them. Thus it comes about, since almost every Congressman is eager to obtain the passage of one or more measures important to him or to his constituents, that many improper measures are enacted through log-rolling which would otherwise be defeated.

Thirdly, the present methods of private bill legislation should be improved. A very considerable portion, possibly a majority, of the bills passed by Congress are of a private nature. That is, they grant a pension to some individual or make provision for some special or private matter. In England there has been created a special procedure for such bills, whereby the introduction of unnecessary and improper ones is discouraged or prevented, and what is just as important, provision is made for a careful judicial determination, outside of parliament, of all the facts and interests involved. To the legislature itself is left only the final decision upon the

reports which are based upon such investigations and judicial determinations.

The introduction of such a procedure as this into our own country would not only enormously lighten the present burdens of Congress, but would undoubtedly materially increase economy as well as justice.

Finally, an improvement which is much needed in congressional methods is some means whereby bills may be better drafted, that is, more definitely and exactly worded. At present, many of the laws which are passed, being drawn by unskillful hands, abound in ambiguities and errors, which inevitably lead to confusion and unnecessary lawsuits for their proper interpretation. This evil might be corrected by the establishment of a committee of experienced members, or even non-members, whose duty it should be properly to frame the laws. For this work technical legal skill and accuracy are demanded. The creation of such a body would, therefore, not only lighten the labor but increase the value of the product of Congress. The larger body would still retain the entire power of enacting law; only the formal and technical work would be given to the committee.

Aside from these specific problems, and vastly more important than them all, is the election of honest and competent members of Congress. This is a duty which devolves upon the voters, and upon them therefore falls the greatest responsibility.

CHAPTER VI

POWERS OF CONGRESS

THE powers of Congress are enumerated in Section 8 of Article I of the Constitution, and will be here described in the order in which they are there stated.

Taxes, Loans, and Debts. — Congress has the power to raise by taxes and loans the money needed for the payment of its debts, and to provide for the common defense and for the general welfare of the United States. Under this last clause are included all items of expense, of whatever character, which are incurred in the exercise of any of the powers laid upon the federal government. The only restriction upon the power of taxation is that all duties and imposts shall be uniform throughout the United States, and that direct taxes shall be apportioned among the several states in proportion to their respective populations.

By duties and imposts are meant taxes levied on importations into this country from foreign countries, or upon exports from this country to other places. The United States has never found it either necessary or expedient to levy export duties. But import duties have constituted its main source of income. Constitutionally, a tax must be levied primarily for the purpose of yielding a revenue for public purposes. But it is

no legal objection to a tariff measure if, incidentally, it yields assistance and protection to home industries.

Excises or internal revenue duties are taxes laid on domestic products, such as distilled liquors, oleomargarine, tobacco, etc. In another chapter the sources of revenue of the United States will be discussed more fully.

A direct tax is one which is paid by the person upon whom it is assessed, while an indirect tax is one which may be shifted upon another. Thus the tariff duty upon imports is an indirect tax, since the importer by whom it is paid in the first place adds a corresponding amount to the prices of the imported commodities when offered for sale, and thus the purchasers and consumers really pay the taxes in the enhanced prices. Poll, or capitation, taxes, and taxes on land are direct taxes. It has recently been declared by the Supreme Court of the United States that a tax based upon incomes is a direct tax, and therefore one that, according to the Constitution, must be distributed among the states in proportion to their population. It was because the federal income tax of 1895 was not so apportioned that it was declared void by the Supreme Court.

The individual states have full and unrestricted powers of taxation, except as to the following matters:

1. They may not tax any property or agency, or salary of an official of the United States.
2. They may not levy any export or import duty.
3. In general, they may not lay any tax which can operate in any way as a restraint upon, or regulation of, any matter over which the United States has exclu-

sive jurisdiction. Thus they are prohibited from laying any taxes which operate in any way as a regulation of interstate commerce.

A state's taxing power is limited to persons and property within its own jurisdiction.

Under its authority to borrow money, it has been held that Congress may sell bonds of the United States, establish national banks, and issue legal-tender paper money.

Foreign and Interstate Commerce. — This is a subject the control of which is given exclusively to the United States. Under this authority Congress has the right to enact quarantine, pilot, and wharfage laws, improve rivers and harbors, and exercise a large control over all agencies of interstate commerce, such as railroads, steamboats, telegraphs, etc. Incidental to this federal control of interstate and foreign commerce, the federal Supreme Court can declare void any act of a state which in any way interferes with, or attempts the regulation of, this subject.

In 1887 Congress, under this authority, established the Interstate Commerce Commission, to which were granted powers of preventing unfair discrimination in passenger and freight railway rates. In 1890 it enacted what is popularly known as the Anti-Trust Act, which declares illegal all combinations or agreements in the form of trusts or otherwise, in restraint or regulation of trade between the states; and prescribes severe penalties for the persons engaging in such contracts or combinations.

Naturalization. — Congress is given exclusive power

over this subject, regarding the nature of which we have already spoken in a previous chapter.

Bankruptcy. — Congress has power over this subject, but not an exclusive one. Therefore, while there was no existing federal bankrupt law, individual states could legislate in reference thereto. A comprehensive national law upon this subject was enacted by Congress July 1, 1898, which provides for both voluntary and involuntary bankruptcy.

Coinage of Money. — Congress has the power of enacting laws for the coinage of money, and the regulation of the value thereof. This power is exclusive, for not only is it given to Congress affirmatively, but the individual states are expressly forbidden to coin money or to make anything but gold and silver a tender in payment of debts. The states are also forbidden to "emit bills of credit." By a bill of credit is meant "a bill issued by the state involving the faith of the state, and designed to circulate as money on the credit of the state in the ordinary uses of business." Congress has also the power "to fix the standard of weights and measures"; and it may provide also for the punishment of counterfeiting the securities and current coin of the United States.

Post Offices. — Congress is given the power "to establish post offices and post roads." As Judge Cooley says: "This power to establish post offices includes everything essential to a complete postal system under federal control and management, and the power to protect the same by providing for the punishment as crimes of such acts as tend to embarrass or defeat the purposes had in view in their establishment."

Copyrights and Patents. — The next clause gives Congress the exclusive control of copyrights and patents. The words of the grant are: "To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries."

At present copyrights last twenty-eight years and may be extended fourteen years further if desired. Patent rights endure for seventeen years with privilege of seventeen years further extension if demanded.

Judicial Powers. — Congress is given power to constitute tribunals inferior to the Supreme Court. Of this authority we shall speak in a following chapter.

Criminal Jurisdiction. — Congress has the power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. The necessity for giving to the national government the control over these matters of admiralty and international law is too obvious to require comment. Incidentally, as has been before said, Congress, in order to render effective its other express powers, has an extensive criminal jurisdiction for the punishment of all offenders against federal law, and over all offenses committed within those places over which it has exclusive jurisdiction as, for example, the territories, the District of Columbia, United States forts, arsenals, navy yards, etc.

War Powers. — To Congress is given the power of declaring war, of raising and supporting armies, of providing and maintaining a navy, and of making rules for their government and regulation.

The President is the Commander in Chief of the Army and Navy and hence may direct their operations in the field and on the sea, and appoint their officers. But he must look to Congress for the laws providing for their establishment and maintenance. The provision of the Constitution that appropriations of money for the support of the army shall not be for a term longer than two years was inserted in order to place it beyond the power of the President and Congress to carry on a war without the control of the people, who, in the next congressional election are thus enabled, if they so desire, to elect representatives who will reverse a war policy of which they disapprove. Though the President is the Commander in Chief of the Army and Navy, and therefore has complete control over their operations in time of war, yet he never himself takes the field, but hands over his authority to officers appointed by him, and reserves to himself only the right to interpose his power of direction in exceptional cases.

By the power of granting letters of marque and reprisal which the Constitution gives to Congress is meant the authority to empower private persons to fit out privateers or armed vessels to prey upon an enemy's commerce.

Militia. — Congress has power “to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.” And also “to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers,

and the authority of training the militia according to the discipline prescribed by Congress."

By act of Congress the militia consists of all able-bodied male citizens between 18 and 45 years of age.

The organized militia, termed the National Guard, consists of state troops, is regulated by state law, is largely maintained at state expense, and may be called out by the Governors of the states when necessary to enforce state law. When, however, its assistance is needed for the enforcement of federal law, its members are paid the same as the regular troops of the federal government, and are subject to the same regulations. Congress has given to the President the power to call for the aid of the militia when he deems it necessary, and this has been done three times in our history. First in 1794, to enforce the federal revenue law in western Pennsylvania; second, in the War of 1812; third, at the time of the outbreak of the late Civil War. The recent call for troops for the Spanish War is not included in the above enumeration, as the militia was not called out as such.

The District of Columbia. — To Congress is given the power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States." Similar complete authority is given over all other federal property, such as forts, arsenals, dockyards, etc.

The District of Columbia is the seat of the federal government and contains about seventy square miles,

and includes the city of Washington. The executive and judicial officers of this district are therefore appointed by the President, while Congress serves as its legislature. Its inhabitants have no rights of suffrage at local or national elections.

The Territories. — Congress is given the power to dispose of and make all needful rules and regulations respecting the territories.

At the time of the adoption of the Constitution the federal government possessed jurisdiction over vast tracts of territory, which at that time were so thinly populated by white men that no pretense could be made of fully organized political control over them. At the same time it was plainly seen that the time would soon come when they would become more thickly populated, and would desire a participation in the rights and benefits of the Union. For this reason it was provided that, until that time should come, Congress should have complete authority over them, but when their population should warrant it, they should be allowed admission to the Union upon a complete equality with the original thirteen states. The provision of the Constitution as to this is as follows: "New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states without the consent of the legislature of the states concerned, as well as of the Congress."

Besides the territory possessed by the United States

in 1789, vast additional tracts have been obtained from France, Spain, Mexico, and Russia; the Hawaiian Islands also were annexed by the United States, with the consent of their government, in July, 1898. From this acquired territory and from that originally owned, thirty-two new states have been formed, and admitted into the Union in accordance with the above provisions of the Constitution.

While in the territorial form, the laws and governments of such lands are wholly within the control of Congress. At present there are five such areas, viz.: New Mexico, Arizona, Indian Territory, Oklahoma, and Alaska. Of these, Alaska and Indian Territory are what are called unorganized territories. In these, because of the smallness of the white population, no attempt is made to establish any regular local government, but they are governed directly by a Governor appointed by the President and by such laws as Congress chooses to make.

The government of the remaining, or organized, territories is, in general, as follows:

The executive of the territory is the Governor, appointed by the President for a four-years term. There is also a Secretary similarly appointed and a Treasurer, Auditor, and Superintendent of Public Instruction appointed by the Governor. The legislature consists of two Houses, a Council and a House of Representatives. These are elected by the people of the territory, and have a term of two years. The legislature meets every other year. The extent of its powers depends upon the will of Congress, but is, in practice, almost as broad as

that of the legislatures of the states, with the qualification that many of its acts may be annulled at any time by an act of Congress. The judiciary consists of three or more Judges, together with a District Attorney and a United States Marshal, appointed by the President. Territories send neither Senators nor Representatives to Congress, but have one Delegate apiece in the House, who may speak but not vote.

Admission of a Territory as a State. — A territory is an embryo state. As soon as a territory becomes sufficiently populated it applies for admission into the Union as a state, and such admission is accomplished in the following manner: When an application for statehood is made by a territory, it is considered by Congress, and, if approved, the inhabitants of the territory are authorized to form for themselves out of such territory a state government, and thus prepare themselves for admission into the Union. This is termed the enabling act.

A state government is formed as follows: The Governor of the territory issues a proclamation declaring that on a certain date there shall be held an election of delegates to a convention, such convention to be held at a specified time. These delegates are elected by popular vote. The members of the convention thus formed declare that they, on behalf of the people of the territory adopt the Constitution of the United States, and then proceed to draft a state constitution and government. It is provided that this constitution shall be republican in form, and make no distinction in civil and political rights on account of race or color, except for

Indians not taxed; that it shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. Perfect religious toleration must be guaranteed. All right or title to the unappropriated public lands lying within the territory must be disclaimed and given over to the United States. Provision must also be made by the constitution for the maintenance of a system of public schools.

After adoption by the convention the constitution is offered to the people for ratification. If it is ratified, the Governor certifies the fact to the President of the United States. Provided the constitution is found to comply with all the conditions just mentioned, the President issues his proclamation declaring the ratification of the constitution, and upon the same day that the proclamation is issued the territory is deemed admitted by Congress into the Union as a state, on an equal footing with the original states, and entitled to representation in both Houses of the federal Congress. The Representatives and the Governor and other state officers are usually elected on the same day as that upon which the constitution is ratified by the people.

Implied Powers. — In the last clause of Section 8 of Article I it is said that Congress shall have the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.” The significance of this clause we have explained in a previous chapter.

Limitations upon the Federal Power. — Besides the

implied restriction upon Congress that it shall not infringe on any of the powers of the judicial or executive departments, or encroach upon the fields of activity reserved by the Constitution to the individual states, in Section 9 of Article I it is expressly prohibited from exercising the following powers :

1. To prohibit the slave trade prior to 1808. This power was exercised as soon as that date was reached.

2. To suspend the writ of *habeas corpus* except when required in cases of rebellion or invasion. The nature of this writ has been explained in a previous chapter. It has been disputed whether the President or Congress has, under this clause, the right of suspending the writ. The general opinion is that the right belongs to Congress, though President Lincoln exercised it in the late Civil War.

3. To pass a bill of attainder or *ex post facto* law. The meaning of both of these phrases has already been explained.

4. To levy a capitation or other direct tax except in proportion to the populations of the individual states.

5. To levy a tax or duty on articles exported from any state.

6. To give a preference to the ports of any one state over those of another in the regulation of commerce or the collection of revenue ; or to require vessels bound from the port of one state to enter, clear, or pay duties in another.

7. To draw money from the treasury, except in accordance with appropriations made by law.

8. To grant titles of nobility. It is also provided

that no person holding any office of profit or trust under the United States shall, without the consent of Congress, accept any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Citizenship in the United States. — The meaning of citizenship in general we have considered in Part I of this book. Something more needs to be said as to citizenship in the United States because of peculiarities of application, due to the federal character of our government.

Previous to the Civil War and the Thirteenth Amendment, negro slavery existed in this country, and all Africans so held in servitude were not, in the eyes of the law, citizens either of the states in which they lived or of the United States. By the Emancipation Proclamation of President Lincoln, which took effect January 1, 1863, slavery was abolished in those Southern states which were in rebellion against the federal government; and by the Thirteenth Amendment, adopted in 1865, slavery was constitutionally prohibited throughout the Union. This amendment reads as follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

By the Fourteenth Amendment, adopted in 1868, it is declared that: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Henceforth there was to be no distinction between whites and blacks as to citizenship. The Indians who maintained their tribal relations were to constitute the sole exception to the rule that birth within this country necessarily confers citizenship. This amendment also put an end to that assertion, which had so long been made, that state citizenship is prior to and more fundamental than national citizenship; that is, that one became a citizen of the United States only because he was first a citizen of a particular state.

From this it appears that every resident in the United States, not an alien, has a double citizenship; first, of the United States, and secondly, of the state wherein he resides.

To each of these citizenships different rights attach. "A citizen of the United States as such has a right to participate in foreign and interstate commerce, to have the benefit of the postal laws, to make use in common with others of the navigable waters of the United States, and to pass from state to state, and into foreign countries, because over all these subjects the jurisdiction of the United States extends, and they are covered by its laws. These, therefore, are among the privileges of citizens of the United States. So every citizen may petition the federal authorities which are set over him in respect to any matter of public concern; may examine the public records of the federal jurisdiction; may visit the seat of government without being subject to the payment of a tax for the privilege; may be purchaser of the public lands on the same terms with others; may participate in the government if he comes

within the conditions of suffrage ; and may demand the care and protection of the United States when on the high seas, or within the jurisdiction of a foreign government. The privileges suggest the immunity. Wherever it is the duty of the United States to give protection to a citizen against any harm, inconvenience, or deprivation, the citizen is entitled to an immunity which pertains to federal citizenship." (Cooley.)

Especially has the citizen the right to claim from the federal government a protection in this immunity against the action of the individual states, for the Fourteenth Amendment declares further that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The rights which pertain to state citizenship are those which pertain to those matters over which the states have jurisdiction.

In order to prevent unjust discrimination by the states between their own citizens and those of other states, Section 2 of Article IV of the Constitution provides that: "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." That is, a citizen of one state living in another state, or owning property therein, has the same right to protection by that state that its own citizens have, nor can any state pass any law which affects a citizen of another state in any manner different from that in which it affects its own citizens.

Suffrage, Fifteenth Amendment. — As before remarked, the right to vote does not follow as a necessary consequence of citizenship. Hence the Thirteenth Amendment, granting freedom to the negroes, and the Fourteenth, conferring on them citizenship, did not give to them the suffrage. This privilege still lay in the individual states to give or withhold as they might see fit. After the emancipation of the slaves it was considered that the best way to secure to them protection against unjust legislation on the part of their former masters, as well as to assist them in their political education, was to give them the right to vote, or to induce the states to give them that privilege. For this reason the second section was added to the Fourteenth Amendment, whereby it was provided that if the right to vote should be denied to any of the adult inhabitants of a state, that state's representation in Congress should be proportionately reduced. If, consequently, any of the Southern states should refuse to grant the suffrage to their large negro populations, the number of Representatives to which they would be entitled in Congress would be greatly reduced. This was a strong inducement to the Southern states to confer upon the negro the right to vote; but it did not render it imperative upon them to do so.

In 1870, however, the Fifteenth Amendment was adopted which compelled the state to grant to negroes the right to vote. The states still have the right to refuse the suffrage to certain classes of citizens, but they cannot base this refusal upon race, color, or previous condition of servitude.

CHAPTER VII

UNITED STATES EXECUTIVE — THE PRESIDENT

Election of the President and Vice President. — The Constitution provides that “the executive power shall be vested in a President of the United States of America.” His term of office is fixed at four years, at the expiration of which he is eligible for reëlection. No person except a natural-born citizen can be selected as President, and it is required that he shall have attained the age of thirty-five. The present constitutional provision for electing the President, as given by the Twelfth Amendment, is a complicated one. It is provided that there shall be first selected a set of electors, collectively termed the Electoral College. Each state is allowed the selection of a number of these electors equal to the number of Senators and Representatives added together to which it is entitled in Congress. Each state may fix its own method of appointing or electing these electors, but in these days they are universally elected by popular suffrage, that is, in an election in which all adult citizens, unless specifically disqualified, have a right to vote. These elections occur upon the first Tuesday after the first Monday in the November preceding the fourth of March when the new President is to be inaugurated. On the second Monday of the following January

the electors meet and cast their votes for President and Vice President, and on the second Wednesday of February these votes are opened by Congress and counted, and at noon on the fourth day of the next March those elected President and Vice President are inducted into office.

The electors in voting make distinct ballots for those voted for as President, and for those voted for as Vice President; and the person having the greatest number of votes for President is declared elected if such a number be a majority of the whole number of electors. If, however, no person have an absolute majority, the three highest names are selected by the House of Representatives from whom to elect the President. But in so electing, the House votes by states, the representation from each state having one vote.

The method of electing the Vice President is the same, except that if no one has an absolute majority in the Electoral College, the two highest names are selected by the Senate from which to elect. In so electing, the Senate does not vote by states, but each Senator has one vote. An absolute majority of the votes cast is necessary for a selection both when the Senate is electing the Vice President and the House the President.

Such, as matter of law, are the constitutional provisions for electing the President and Vice President. It was originally intended that the Electoral College should consist of the best men of the country, who should use their personal and individual judgment in making their choice. As a matter of fact, almost from the beginning

this has been a mere matter of form, it being previously well known for whom the electors are expected to vote if elected. Thus it is that at present the electors for whom the people vote in November are all pledged to vote for particular candidates, and thus in fact, if not in form, the President and Vice President are elected by the people as much as if the people voted directly for them.

Presidential Succession. — The provisions of the Constitution regarding the presidential succession, in the case of the death or resignation of both President and Vice President, are: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected." (Article II, Section 1.)

In pursuance of the power thus granted, Congress in 1792 passed an act declaring that in case of the death, resignation, etc., of both the President and Vice President, the succession should be first to the President of the Senate and then to the Speaker of the House.

This order was changed by the act of 1887, which is now in force, and which provides that the succession to the presidency shall be as follows:

1. President.
2. Vice President.

3. Secretary of State.
4. Secretary of the Treasury.
5. Secretary of War.
6. Attorney General.
7. Postmaster General.
8. Secretary of the Navy.
9. Secretary of the Interior.

In all cases the remainder of the four-years term shall be served out. This act regulates also the counting of the votes of the electors by Congress, and the determination of any points which may arise as to who are the legally chosen electors.

None of the above officers can succeed to the office, however, unless they have the constitutional qualifications for the presidency.

The President may be removed from office before the expiration of his term, by impeachment. This has been but once attempted, and then unsuccessfully.

Duties of the President.

1. *To see that the laws are faithfully executed.*—First and most important of all the duties of the President is to see that the laws of Congress are faithfully executed. By this it is not meant that he can personally see that this is done, but he it is, who, in the last resort, has not only the appointment of the chief executive officials but an oversight over their conduct and the power to remove them in case of any dereliction of duty. He receives information from them, can direct, when necessary, their policy, and can hold them responsible for the conduct of their subordinates. Through him the acts of Congress are officially pro-

mulgated, and by him, if necessary, the army and navy of the United States, and the militia of the individual states may be called upon to overcome resistance to federal law.

2. *Foreign Relations.* — The President, as the titular head and personal representative of the entire nation, is the one through whom, and in whose name, all the affairs of our country with foreign nations are conducted. In this he is assisted by the Secretary of State, but his is necessarily the directing hand. Though the consent of the Senate is necessary for the ratification of treaties, all of the preliminary negotiations leading up to the final treaty are wholly within his control. All foreign ambassadors, ministers, and consuls are appointed by him, with consent of the Senate.

3. *Legislative Power.* — The President participates to a very considerable extent in the lawmaking power. In the first place, he exerts an influence in initiating laws. In annual and special written messages to Congress, he calls attention to the most important legislative needs of the country, and also reports to that body the manner in which its former laws have been executed. But far more important than this, he participates directly in the enactment of laws, for his consent is necessary for the enforcement of congressional enactments, unless the refusal of that assent be overcome by a two-thirds vote in both of the Houses of Congress. The President has also the power to convene both or either of the houses of Congress, when necessary, in extra session for the consideration of special matters; and in case of disagreement between them at

any time with respect to the time of adjournment, may adjourn them to such time as he thinks proper.

4. *War Powers.*—The President, as Commander in Chief of the army and navy, has enormous powers, especially in time of war. Under this authority the Emancipation Proclamation was issued, the writ of *habeas corpus* suspended, a blockade of southern ports established, and, at the end of the Civil War steps taken to bring back the states that had been in rebellion to their normal status as members of the Union.

5. *Pardoning Power.*—The President has the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. Involving, as it does, the reading of numerous petitions for clemency presented in behalf of prisoners, and an examination of the facts of their cases, this duty entails no small amount of labor.

6. *Appointing Power.*—Lastly, the President has extensive powers of appointment. The Constitution says that: "He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they may think proper in the President alone, in the courts of law, or in the heads of departments."

The Civil Service.—In 1850 the persons employed in the Civil Service of the United States government,

that is, outside of the army and navy, numbered 32,952. In 1897 they numbered nearly 180,000. The appointment of a great majority of these has been placed in the hands of the heads of the different executive departments, and of these about 90,000 are in what is called the "classified service." By this is meant that their appointments are based upon competitive examinations, and that they are in general removed only for cause, that is, for incompetency or misconduct.

Of those offices, outside the classified service, the appointment to which is still in the hands of the President or heads of departments, nearly 60,000 are fourth-class postmasters, that is, postmasters receiving less than \$1000 salary per annum. The appointment of these, as well as of the clerks chosen by the heads of the executive departments does not require confirmation by the Senate. Of those places which do require such confirmation there are about 4800. Of these, about 3600 are postmasters who receive more than \$1000 salary. These, in general, are ordinarily allowed to hold office for four years. Of the remaining officials who may be removed or appointed at any time by the President, and who are as a fact generally removed by an incoming President, if of a different political party from his predecessor, to make place for new appointees of his own political faith, the more important are diplomatic officials, consular agents, heads of the different executive departments, and such other high executive officials as Commissioner of Internal Revenue, Treasurer of the United States, Solicitor General, Interstate Commerce Commissioners, Comptroller of the Currency,

Commissioner of Patents, Commissioner of Pensions, Assistant Secretaries, Superintendents of Mints, Collectors of Customs, Collectors of Internal Revenue, Pension Agents, Land Agents, Indian Agents, District Attorneys, Marshals, Territorial Governors, etc. Many of these officials practically hold office for four years, and hence their places are filled only upon the expiration of their terms.

Judges of the Supreme Court are appointed by the President and confirmed by the Senate, but as they hold office for life, vacancies occur only by death, resignation, or impeachment.

All officials, for the appointment of whom there is no express provision of law, are nominated by the President and confirmed by the Senate.

All presidential nominations when sent to the Senate are referred to that committee which has to deal with that particular branch of the public service within which the office falls for which the nomination is made. The report of this committee is considered in executive session, and if there be an adverse vote, the nomination fails, and the President must submit another name, and so on until one is accepted.

It is absolutely impossible for the President himself to consider the individual merits of every candidate for the thousands of offices which he has to fill. He therefore has to rely in general upon the advice of the heads of the departments in which the appointments are to be made, or upon the recommendations of the Senators and Representatives of his party from the states in which the positions lie. This power of controlling the

official patronage in one's own congressional district or state is an extremely important one to all Representatives and Senators, for through it they are able to reward those who have assisted them in their election. At the same time it is a thoroughly demoralizing factor. It results in the giving of offices as a reward for political services, rather than as a return for individual merit and fitness. It also entails a serious drain upon the Congressman's time, necessitating, as it does, an examination of the respective claims and credentials of the numerous applicants for every position which has to be filled. For these reasons a very considerable number of Congressmen say that they would be glad to have these remaining unclassified positions placed under the civil service regulations. Having then few or no offices at their disposal, they would be released not only from the task of selecting incumbents, but relieved from the dissatisfaction of those applicants who are necessarily disappointed.

In theory and in propriety the Senate in confirming or rejecting nominations should be governed entirely by the merits of the persons whose names are submitted to them by the President. But, in fact, there has grown up what is almost a cast-iron rule, known as "senatorial courtesy," according to which the Senate will not confirm one who is not acceptable to one or both of the Senators from the state in which the offices are situated, provided, that one or both of such Senators belong to the political party which is in the majority in the Senate.

Civil Service Reform. — We have spoken of certain offices being in the "classified service," that is, having

their incumbents selected by competitive tests, and protected from removal except for good cause. At the beginning of our history under our present constitution the President was conceded, by an unwritten law, to have the sole power of removal from office, — a power which might be exercised at his own discretion. That is, he might base its exercise either upon a stated cause, or upon no given reason. During the first forty years, until the inauguration of Jackson in 1829, but seventy-three removals were made. But President Jackson initiated the iniquitous "Spoils System" based upon the principle that "To the victor belong the spoils." In accordance with this principle the entrance of every new political party into power is to be followed by indiscriminate dismissals, in order to make places for appointees from the victorious side. In one year Jackson made ten times as many removals as had been made throughout the ten preceding administrations.

The system thus begun was followed by succeeding Presidents to a greater extent and without check until the evil became so grievous that in 1883 was passed the first Civil Service Reform Act, otherwise known as the Pendleton Act. This measure provided for competitive examinations to be held for a few specified positions. It was also provided that appointments, so far as possible, should be distributed among the different states and territories in proportion to their population. Since that day the merit system has been successively extended over new branches of the public service, until now it provides for nearly 90,000 officials.

None of these require confirmation of their appointment by the Senate.

It is a subject for great congratulation that civil service reform has thus far progressed, and it is to be hoped that it may be extended in the near future to a majority of the remaining 90,000 offices of the federal service.

In many of our states, and especially in our larger cities, the spoils system is still rampant and, leading as it does to inevitable corruption and official incapacity, the influence of every good citizen should be directed to its abatement and abolishment. It is safe to say that could we once get suitable state and national legislators elected, and competent officials appointed, all the other reforms in the governmental service would come of themselves. The best of systems cannot be made to give satisfactory results if administered by corrupt and incompetent officials; while a very defective one can, if honestly and intelligently operated, be trusted not only to give fairly good results, but can be depended upon to correct itself, and thus ultimately to yield the very best of fruits.

CHAPTER VIII

THE CABINET AND EXECUTIVE DEPARTMENTS

Introductory. — The Constitution simply declares that the executive power shall be vested in the President of the United States, but it was not intended that all of the executive work of the federal government should be performed by him. Although no specific executive departments were provided for, it was evidently intended that some should be created, for it is stated in one clause that the President may require in writing opinions from the heads of executive departments, and also in another place, that Congress may, at its discretion, vest the appointment of inferior officials in the hands of such executive chiefs.

Accordingly, Congress has from time to time created such departments until now there are nine, to wit: (1) State; (2) Treasury; (3) War; (4) Navy; (5) Interior; (6) Post Office; (7) Justice; (8) Agriculture; (9) Labor. These departments have been created as required by the growth of governmental duties. Three of them, the State, Treasury, and War were created by the First Congress, in 1789. By the same Congress was created the office of Attorney General of the United States, and the Attorney General, together with the Secretaries of the three departments, constituted President Washington's

first Cabinet. The Navy Department was added in 1798. Prior to that date, naval affairs had been managed by the War Department. A Post Office for the colonies was established by the Postal Act of Queen Anne's reign. The Post Office Department under the present government was established in 1789, but the Postmaster General did not become a cabinet officer until 1829. The Interior Department was created in 1849, by grouping together in one department several branches of the government service which had formerly been distributed among the other departments. As early as 1839 the Patent Office, under the Interior Department, was intrusted with various duties concerning the agricultural interests of the country, among the chief of which was the distribution of seeds. In 1862 a separate Department of Agriculture was established, and these duties were transferred to it. In 1889 the head of the department was made a Secretary and a cabinet officer. A Bureau of Labor, under the Interior Department, was created in 1884. In 1888 Congress constituted it a separate department, but did not make its head a Secretary, and therefore not a cabinet officer.

The heads of the first eight of these departments together form a council of eight, called the "Cabinet," whose duty it is, in addition to the management of the departments, to advise the President on matters of importance. For this purpose regular meetings are held twice a week, at which the affairs of government are discussed and lines of action decided upon. The Cabinet is neither the creation of the Constitution nor, strictly, of law. The existence of a cabinet, however,

was always taken for granted in the discussion and formation of the Constitution. It has no powers other than of advice and counsel to the President.

The growth of executive and administrative business is not fully indicated by the increase in the number of departments. The growth within each department has been much greater. Separate bureaus and divisions have been created, which in some cases are, for all practical purposes, as independent and important as some of the departments themselves.

The organization of all the different departments is much the same. At the head of each is an officer appointed by the President, the President thus having control generally over the whole executive business of the government. These head officers are called Secretaries, except in the cases of the Post Office Department, whose head is the Postmaster General, of the Department of Justice, whose head is the Attorney General, and of the Labor Department, whose chief is termed Commissioner. In a number of the departments there are also one, two, three, or four assistant secretaries, according as the business of the departments requires. For convenience in the despatch of business, the departments are divided into bureaus, the bureaus into divisions, and the divisions into rooms, until, finally, the individual workers—the clerks—are reached. Each bureau has at its head an officer called a Commissioner, and each division a Chief. Each department and bureau, and, in some cases, the division also, has a chief clerk who has charge of the details of the administration and immediate oversight of the

clerks. All work in one finely organized system. The clerk is responsible to his Chief of Division, the Chief of Division to his Commissioner, the Commissioner to the Secretary, and he, finally, to the President and Congress. Each man has his particular place in the system, and no one works at random.

The following description of the duties performed by these departments will serve to show how the executive service is organized, and what, in the main, are the most important functions of the federal government.

The State Department. — The Department of State was the first department established. (Act of July 27, 1789.) There are now three Assistant Secretaries. Their salaries are: Secretary, \$8000; First Assistant, \$4000, and the other two \$3500. The department is divided into seven bureaus, (1) Diplomatic; (2) Consular; (3) Archives and Indexes; (4) Accounts; (3) Statistics; (6) Rolls and Library, and (7) Claims.

The Secretary of State is charged, under the direction of the President, with the duties appertaining to correspondence with the public ministers and consuls of the United States, and the representatives of foreign powers accredited to the United States, and with negotiations of whatever character relating to the foreign affairs of the United States. He is also the medium of correspondence between the President and the chief executives of the several states of the United States. He has the custody of the great seal of the United States, and countersigns and affixes this seal to all executive proclamations, to various commissions, and to warrants for pardon and the extradition of fugitives

from justice. He is regarded as the first in rank among the members of the Cabinet. He is also custodian of the treaties made with foreign states, and of the laws of the United States. He grants and issues passports. Exequaturs to foreign consuls in the United States are issued through his office. He publishes the laws and resolutions of Congress, amendments to the Constitution, and proclamations declaring the admission of new states into the Union. He is required also to make certain annual reports to Congress relating to commercial information received from diplomatic and consular officials of the United States.

The patronage of the Secretary at Washington is small, about sixty clerks, but that which concerns the diplomatic and consular service is important. To facilitate communications and negotiations with foreign nations, and to protect the interests of American citizens in foreign countries, the United States, in common with all civilized nations, has, as we have already learned, representatives residing at the capitals of all the principal nations. This system, called the Diplomatic Service, is under the charge of a separate bureau. The United States has ambassadors or ministers in about thirty-three countries. The chief legations are those of Great Britain, France, Germany, and Russia. The salary attached to each of these legations is \$17,500. The social demands upon ministers are great, and, as a rule, the expenses of ambassadors are greater than their salaries. Representatives of the greater foreign powers receive a much larger compensation than do ours.

To protect our commercial interests abroad, and our seamen and vessels in foreign ports, the United States has agents resident in all foreign seaports of any prominence. Their duties are numerous. They ship seamen, certify invoices, take testimony, examine emigrants, etc. They transmit to the State Department monthly reports concerning any matter of commercial interest occurring at their stations. These reports are published by the department and have a wide gratuitous circulation. This system is called the Consular Service, and is also under the charge of a separate bureau. These agents are of three ranks and titles: (1) Consuls General; (2) Consuls; (3) Consular Agents. The names of the other bureaus indicate the nature of the duties performed by each.

The Treasury Department.—This department was created by act of September 2, 1789. There are two Assistant Secretaries. The department has a large number of divisions, with the following chief officers: (1) The Comptrollers; (2) the Auditors; (3) Treasurer; (4) Register; (5) Commissioner of Customs; (6) Commissioner of Internal Revenue; (7) Comptroller of the Currency; (8) Chief of the Bureau of Statistics; (9) Superintendent of the Bureau of Engraving and Printing; (10) Director of the Mint; (11) Superintendent of the Life Saving Service; (12) Supervising Surgeon General of the Marine Hospital Service; (13) Supervising Inspector General of Steam Vessels. Other offices are, the Supervising Architect, Commissioner of Navigation, Solicitor of the Treasury, Chairman of the Light House Board, and Superintendent of Coast and Geodetic Survey.

The mention of the various divisions indicates the importance and variety of the duties coming under this department. The Secretary is charged with the entire management of the national finances. He submits annually to Congress estimates of the probable revenues and disbursements of the government, prepares plans for the improvement of the revenue and for the support of the public credit, and superintends the collection of the revenue. Two Comptrollers pass upon all claims against the government and accounts received from the Auditors. Six Auditors examine and adjust accounts relating to the expenditures of the various branches of the government.

The Treasurer of the United States receives and keeps its moneys, disburses them on the Secretary's warrants, and manages the Independent Treasury System. The Independent or Sub-Treasury System was adopted by Congress in 1846. According to this system the Treasury Department is rendered independent of the banking system of the country. Sub-Treasuries have been established in the principal cities of the Union for the receipt and disbursement of public moneys. There are sub-treasuries in New York, San Francisco, St. Louis, Chicago, Boston, Philadelphia, Baltimore, New Orleans, and Cincinnati. For greater convenience moneys are also sometimes deposited at certain designated banks.

The Register of the Treasury is the official book-keeper of the United States. The Collectors of Customs and of Internal Revenue have charge respectively of the collection of custom duties and internal revenue

taxes. The Comptroller of the Currency has control of the national banks. The Chief of the Bureau of Statistics collects and publishes the statistics of our foreign commerce. In the Bureau of Engraving and Printing are designed, engraved, and printed all government bonds, national bank notes, drafts, United States notes, etc., for which work about 1200 persons are employed. The Director of the Mint has general supervision over all mints and assay offices. In addition to his annual report he publishes yearly a report on the statistics of the production of precious metals.

The titles of the other officers indicate the general duties of each. The whole department employs about 3400 persons at Washington.

The War Department. — The War Department was established August 7, 1789. There is one Assistant Secretary. The chiefs of the bureaus into which the department is divided are officers of the United States Army, and constitute a part of the military establishment. Their titles and duties are as follows: (1) The Adjutant General of the Army, who has under him a large force of clerks, has the duties of issuing orders, conducting the correspondence of the department, and keeping the record; (2) The Inspector General, who inspects and reports upon the condition of the army at all points, and the accounts of the disbursing officers; (3) The Quartermaster General, who has charge of the clothing, quarters, and supplies, except food supplies, which form the province of the Commissary General. The Surgeon General, who has charge of the medical department, of the army medical museum, and of a

special library. The Chief of Engineers, who has charge of the construction of fortifications, etc. The Judge Advocate General, who reviews the proceedings of courts-martial, and advises the Secretary on points of law. There are also a Paymaster General, a Chief of Ordnance, and a Chief Signal Officer. The Chief Signal Officer has charge of the systems of communicating with distant points by means of various signals, the most noteworthy of which is that of the heliograph, by which information is conveyed by the use of sun-reflecting mirrors.

The War Department corresponds more nearly than any other to the Departments of Public Works found in other governments. All public improvements, the construction of docks, bridges, and the improvement of rivers and harbors, are under the supervision of army engineers. All Arctic explorations and the explorations of our western territory have been conducted by army or navy officers under the direction of the Secretary of War.

The publication of war records is conducted by a special board in the War Department. A large number of volumes has already been published. It is estimated that there will be one hundred and nineteen volumes when the work is completed. The Secretary of War also has charge of the Military Academy at West Point, of certain national parks, and homes for disabled soldiers.

Congress appropriates and expends through the War Department \$400,000 yearly on the National Guard (militia) for its armament and equipment. The aggre-

gate of this reserve army, regularly organized and uniformed, is over 100,000 men. The Secretary also details army officers to furnish military instruction at various colleges.

The Navy Department. — The Navy Department was established April 30, 1798. There is one Assistant Secretary. The routine work of the department is distributed among eight bureaus: (1) Yards and Docks; (2) Equipment and Recruiting; (3) Navigation; (4) Ordnance; (5) Construction and Repair; (6) Steam Engineering; (7) Provisions and Clothing; (8) Medicine and Surgery. The chiefs of the bureaus are officers of the United States Navy. There is a hydrographic office attached to the bureau of navigation, which prepares maps, charts, and nautical books relating to navigation, and makes investigations concerning marine meteorology. This department has charge of the Naval Observatory for which new buildings are now being constructed at Washington. The department publishes yearly, for the guidance of seamen, the Nautical Almanac, the preparation of which is intrusted to a separate bureau. The department also compiles and publishes naval records of the Civil War, and has charge of the Naval Academy at Annapolis, Maryland.

The Interior Department. — The Interior Department was created in 1849, to take charge of various duties not properly belonging to any of the existing departments. There are two Assistant Secretaries besides the head Secretary. The chiefs of the bureaus into which this department is divided, and their respective duties, are as follows:

The Commissioner of the General Land Office has charge of all the public lands of the federal government, their care, supervision, sale, and distribution.

Prior to 1781 but six of the original thirteen states — New Hampshire, Rhode Island, Maryland, Pennsylvania, New Jersey, and Delaware — had exactly defined boundaries. The others claimed lands of various extents, stretching to the Mississippi River, or even to the Pacific Ocean. The title to all this land was then in the individual states, and the national government, as such, had no land of its own. This question of the ownership of the western land was one of the subjects of controversy and discontent between the states. It delayed the adoption of the Articles of Confederation for some time. Those states with little or no land regarded with jealousy their more fortunate neighbors, and would not consent to a union until a settlement or understanding was reached.

The Articles of Confederation were adopted only after assurance was made that all the public lands should be ceded to the federal government. This was finally done by the states.

The government formed under the Constitution succeeded to all this land, and in addition, to further cessions made by the states, the last being that of Georgia in 1802. The subsequent additions of territory were made directly to the United States, and not to the states, and all land thus gained was held as public land, to be disposed of by Congress.

While the area of the United States is 3,668,167 square miles, the public domain which has been ac-

quired by cession, purchase, or conquest, to be disposed of by the government as it desires, has amounted to 2,708,388 square miles, or about two thirds of the total area of the country.

The absolute title to this land, as before stated, became vested in the United States government. The disposal of these lands has always been under the sole power and control of Congress.

Much of this land was thinly populated by Indian tribes, who merely hunted over it, leaving unimproved its natural fertility and vast mineral resources. These tribes, being actual occupants, were recognized to have a sort of half interest in the land. This half ownership was always first extinguished by the United States by purchase for small sums, or by the granting of certain privileges, before the land was opened up for settlement and occupation by the white man. Land is still held to a considerable extent in this way by the Indians. This right of the Indians can be extinguished only by the United States, as the red men are not allowed to sell or treat with individuals or the states or foreign nations.

Until 1812 the affairs of the public domain were managed by the Secretary of the Treasury. In that year the office of Commissioner of the General Land Office was created, which remained a bureau under the Treasury Department until 1846. Upon the creation of the Interior Department in that year, land affairs were transferred to it, and have remained under the same management until the present time. This bureau has complete charge of all matters relating to the manage-

ment and disposal of the public lands, subject to the direction of Congress.

A wide variety of methods of disposing of this land has been followed. The government has, however, never assumed the position of landlord and rented the land, except in one case of some mineral land, and this experiment resulted disastrously. Before the land could be disposed of, it was necessary that it should be surveyed by the government. To do this there was adopted as early as 1796 the so-called rectangular system, which, with slight changes, has been continued until the present time. By this system there are first surveyed a base and a meridian line, crossing each other at right angles, running north and south and east and west. From these fixed lines the land is surveyed and marked off into rectangles of six miles square, each thus containing thirty-six square miles. This is called a township. This is again divided up into sections of one square mile each or 640 acres, and this again into quarter sections of 160 acres each. In some cases these last are still further subdivided.

The regulation and disposition of the public lands has been one of the chief duties imposed upon Congress.

The chief methods by which the public lands have been disposed of are as follows :

1. *Educational Grants.* — Congress from the very first provided liberally for the establishment of common schools through grants of public lands for this purpose. As each township is surveyed, one quarter section of 640 acres is set apart for common schools. This has continued from the beginning to the present time. In

addition, large grants have been made specially for the endowment of universities. Within later years land has been given to every state to found state military and agricultural colleges.

2. *Land Bounties for Military and Naval Service.*— There have been granted by different acts bounties of public land, in the nature of pensions, to the soldiers and sailors of the United States Army, on their honorable discharge, for their service to the government.

3. *To the States for Internal Improvement.*— There was granted to the states during the years from 1828 to 1846, for the improvement of rivers, building of canals, wagon roads, railroads, etc., 162,230,099 acres.

4. *Sale of Public Land.*— Under this head there are two classes of public land; first, that which may be bought for the minimum rate of \$1.25 per acre, and, secondly, the alternate sections along the railroads (the other alternate sections being granted to the railroads), the minimum price of which is \$2.50. There have been sold in all some two hundred million acres.

5. *Under the Preëmption Acts.*— These acts, passed at various times, provide that where a man, a citizen of the United States, settles upon and cultivates for a certain length of time, a tract of land not greater than 160 acres, the United States will give him such tract.

6. *Under the Homestead Acts.*— The homestead laws have created a better and more certain manner for settlers to acquire land than under the preëmption acts. By these acts it is provided that in certain regions any citizen who will select either 160 acres of the \$1.25 land, or 80 of the \$2.50 land, can get a permit from

the land office, settle on the land, and acquire a title to it.

7. *Under the Timber Culture Act.*—This act gives to any one the right to 160 acres of the \$1.25 land if he will plant 10 acres in timber, or 80 acres of the \$2.50 land if he will plant 5 acres in timber.

8. *Certain Lands to States.*—A large quantity of the public land has been given to the states on account of its character, as swamp or overflowed land, and for various other reasons.

9. *Grants to Pacific and other Railroad Companies.*—From 1850 to 1872 a total of 150,504,994 acres was given for railroad construction.

The Commissioner of Pensions has charge of the granting of pensions to old soldiers and sailors. He has a large force at Washington. There are eighteen pension agencies in different parts of the country. In 1808 the United States assumed all the state pension obligations. The act of 1818 gave pensions to all who had served nine months in the Revolutionary War. Other wars were afterwards included. Pension acts passed as a result of the Civil War have enormously increased the amount paid. The report of the commissioner shows that at the close of the fiscal year of 1896 the number of pensioners was 970,678, and the annual expenditures for pensions \$139,280,078.15.

To the disability pension law passed June 27, 1890, is largely due this enormous pension list. This act is the first disability pension law in the history of the world which grants to soldiers and sailors pensions for disabilities which are not proved to have been incurred

in the service and in the line of duty. Speaker Reed of the House characterized it as "the most generous piece of pension legislation ever passed by any nation on earth."

The Commissioner of Patents has charge of the granting of patents. Up to 1793 the granting of letters-patent was given to a board consisting of the Secretary of State, Secretary of War, and the Attorney General, the records and models being kept in the Department of State. In 1793 the granting of patents was given exclusively to the Secretary of State. In 1821 the clerk of the State Department who examined applications for patents received the title of Superintendent of the Patent Office, and on July 4, 1836, the Patent Office was established as a separate bureau of the Interior Department and the office of Commissioner of Patents was created.

About twenty-four thousand patents are issued annually. There is an Assistant Commissioner in chief, an Examiner of Interferences, three Examiners in chief, thirty-eight Principal Examiners, and a large force of Assistant Examiners for different branches. Patents run for seventeen years. The annual receipts of the bureau from fees more than equal the expenditures, and the office now has a surplus of several millions to its credit in the treasury.

The Commissioner of Indian Affairs has charge of all matters concerning the Indians, their education, government, and support. There are 239 Indian schools supported by appropriations made by Congress, 147 of which are controlled directly by the Indian Bureau.

The average attendance of pupils at these schools is somewhere between eleven and twelve thousand. The number of Indians in our country (not counting those of Alaska) is about two hundred and fifty thousand. They occupy or have control of about one hundred and eighty-five million acres of land. This amount is being yearly decreased.

The Bureau of Education was originally established as an independent department by act of Congress, approved by the President March 2, 1867. By an act of Congress which took effect July 1, 1869, this department was changed to an office or bureau in the Interior Department. The duties of this bureau are to collect and diffuse information regarding schools, methods of instruction, and school discipline, etc., and otherwise to promote the cause of education. The results of the investigations here carried on are of the utmost value to all educators, and such is the extent to which the merit of the work and publications of this office are recognized by the leading educators of the country, that, in their opinion, the bureau should be reestablished as a department, and its chief made a member of the President's Cabinet. The publications of the bureau consist of (1) *Annual Reports*, which set forth statistics and general information concerning the educational systems of the states, territories, larger cities, universities, and colleges; professional, special, and scientific schools, academies, preparatory schools, and kindergartens, with a summary of the progress of education in foreign countries; (2) *Special Reports* on subjects pertinent to the times; (3) *Occasional Bulletins* on

matters of current educational interest; (4) *Circulars of Information* on important questions of educational work or history, which are issued in yearly series. Numerous annual reports have been issued. The working force of the bureau is divided into three divisions; first, Records; second, Statistics; third, Library and Museum. The library of this office contains one of the most valuable pedagogical collections in the country.

The Commissioner of Railroads has charge of the government's interest in certain railroads to which the United States has granted loans of credit or subsidies in lands or bonds. By the acts of July 1, 1862, and July 1, 1864, Congress, in order to encourage the building of a trans-continental railroad, granted to several Pacific railroad companies subsidies of land adjacent to the roads, and issued certain amounts of bonds on which was guaranteed interest at the rate of six per cent. The amounts of lands given and bonds issued were in proportion to the number of miles of road constructed. The lands were a gift. The bonds were to be repaid by the companies with all interest which might have been advanced by the government. From 1850 to 1872 the various railroads received a total of 155,504,994 acres of land and \$147,110,069 proceeds of bonds and interest paid by the United States. The roads have repaid of this amount \$36,723,477, leaving at the present time due from the roads to the United States the sum of \$110,386,592. This they will be unable to pay upon the maturity of the bonds, and a bill has been before Congress for several sessions looking toward a better adjustment of this debt. The Com-

missioner of Railroads was originally styled the Auditor of Railroad Accounts. The office was created in 1878.

Geological Survey.—This branch of the Interior Department was established in 1879. Its work is the investigation and determination of the geological structure of the various sections of the country, the composition of soils, the reclamation of waste lands, etc. In this bureau, topographical and irrigation surveys of arid regions of the United States are made. In its publications are to be found a discussion of the geological structure of every state and territory, and information concerning the occurrence and production of each great metallic and mineral staple of the country. The bureau comprises one Geographical, twelve Geological, six Paleontological, and four accessory divisions. A division of Mines and Mining publishes an annual report on the mineral resources and production of the United States.

The Superintendent of Census is appointed each decade for the purpose of taking the regular decennial census. The Eleventh Census is the last taken. The first was taken in 1790. Each census has shown a tendency to be more elaborate and to embrace a greater number of subjects than the one preceding. There were employed in the taking of the Eleventh Census 42,000 enumerators, 2000 clerks, from 800 to 900 special agents, 175 supervisors, and 25 experts.

In addition to these eight bureaus, the Interior Department has charge of various other branches of government. All of the territories come under the Secretary's supervision, and look to him in case of any difficulty. The Secretary also has charge of the

Yellowstone National Park, the Hot Springs Reservation in Arkansas, and of certain hospitals and eleemosynary institutions in the District of Columbia. A Superintendent of Public Documents looks after the receipts, distribution, and sale of government publications.

The Post Office Department. — The Post Office Department was established in 1789, but the Postmaster General did not become a cabinet officer until 1829. The Postmaster General has charge and management of the department, and of the domestic and foreign mail service. He can establish post offices and appoint postmasters of the fourth and fifth classes, *i.e.*, those whose salaries are less than \$1000. These number over 60,000. The total number of post offices is about 70,000. The President appoints to those of the first three classes. Other officers besides the Assistant Postmaster General are the Superintendents of the Money Order Division, of Foreign Mails, and of the Railway Mail Service, and an Assistant Attorney General for the department.

The United States is a member of the Universal Postal Union, of which most, if not all, of the civilized countries are members. The central office is known as the International Bureau of the Universal Postal Union, and is conducted under the superintendence of the Swiss Postal Administration; its expenses are borne in common by all the nations composing the union. The revenues of the Postal Department nearly equal the expenditures, and would have exceeded them before this but for the fact that as soon as the amount of réceptions has warranted it, improvements have been

made in the service through the reduction of postage rates and the extension of the free delivery system. It has never been the policy of the government to make this department a source of revenue.

The patronage of the Post Office Department is the most important of any of the departments, and it is very largely for this reason that the Postmaster General is a member of the cabinet. Crawford of South Carolina secured, in 1820, the passage of an act limiting the term of postmasters to four years. The appointment of postmasters does not come under the Civil Service Act. It is one of the aims of Civil Service reformers to secure the appointment of postmasters under its provisions. The most important questions of public policy concerning this department are the reduction of postage rates on letters to one cent, the advisability of the establishment of a postal telegraph service, the extension of the free delivery system, and the relation of the department to the Civil Service regulations.

The Department of Justice. — The office of the Attorney General of the United States was established in 1789; the Department of Justice not until 1870. The Attorney General gives advice upon legal points to the President, and also, when requested to do so, to the heads of departments. He directs the cases of the United States, and sometimes appears in them, especially in the Supreme Court. He supervises the United States Marshals and District Attorneys. His substitute and principal assistant is the Solicitor General. There are two Assistant Attorneys General; the business of the one being connected with the Supreme Court, and

of the other with the Court of Claims. There are also, as mentioned before, certain legal officers attached to the other departments. Additional counsel is frequently employed to assist in the argument of important cases. To the Attorney General belongs the duty of recommending persons to the office of Judge, etc., in the United States Circuit and District Courts.

The Department of Agriculture. — The Department of Agriculture was organized as a separate department in the year 1862. In 1889 its head became a Cabinet officer. There is one Assistant Secretary. The duties of the Secretary are to promote in every way the agricultural interests of the country. For this purpose the department is separated into thirteen bureaus, under the following officers: (1) Entomologist; (2) Chief of the Bureau of Animal Industry; (3) Chemist; (4) Botanist; (5) Chief of the Section of Vegetable Pathology; (6) Statistician; (7) Ornithologist; (8) Director of the Office of Experiment Stations; (9) Microscopist; (10) Pomologist; (11) Chief of the Forestry Division; (12) Chief of the Seed Division; and (13) Chief of the Weather Bureau. The enumeration of these titles indicates the general nature of the work of the department. The Statistician publishes monthly and annual reports concerning statistics of the condition, prospects, and harvests of the principal crops, the wages of farm labor, etc. The Chemist analyzes fertilizers, soils, etc. By the act of March 2, 1887, \$15,000 per annum was appropriated by Congress to each of the states and territories which have established an agricultural college, or an agricultural college department, for

the establishment of experiment stations. The Department of Agriculture has general supervision of these.

Congress, by an act passed in 1890, created a Weather Bureau under the Agricultural Department and transferred to it the business of weather prognostications which had before been under the Chief Signal officer in the War Department. This service has stations at the military stations in the interior of the continent, at life-saving stations, and at other points in the states and territories. Meteorological observations are taken at each station, and the information is forwarded to the central office at Washington, where weather predictions for the succeeding day or days are made. The predictions are given gratuitously to the public through a system of flag signals, by the distribution of weather maps, and by publication in the daily papers.

The Department publishes the result of the scientific investigations carried on by its officers in "Annual Reports" of the Secretary and Chiefs of Divisions; in a series of "Circulars" on special subjects, in regular "Bulletins"; and in a series of studies on "Insect Life." These documents are distributed gratuitously.

The Department of Labor.—The Department of Labor was created in 1884, as a bureau under the Interior Department. In 1888 it became a separate department. Its work is of a purely statistical character. Besides valuable annual reports, the results of special investigations at home and in Europe are published. A bulletin containing current information regarding labor topics is also issued every month.

Had all the executive departments been created at one time by a constitutional convention, we should be justified in expecting a greater symmetry and uniformity in the naming and grouping of chief officials. An inspection of the various executive officers shows that not a few are under departments other than would be expected; and the naming of officials is often misleading as to their importance. Within recent years there has appeared a strong tendency to depart yet more from a systematic grouping of executive duties under departments. Executive functions have been given to bodies entirely independent of the departments. To complete our survey of the federal executive, we must therefore consider the following: (1) The Interstate Commerce Commission; (2) The Fish Commission; (3) The Civil Service Commission; (4) The Government Printing Office; (5) The National Museum, Smithsonian Institution, the Bureau of Ethnology, and (6) The Congressional Library.

The Interstate Commerce Commission.—With the growth of our railroad system have come various abuses. Roads have discriminated in favor of one shipper over others, and of one locality over others. Combinations have been formed to keep up railroad passenger and freight charges. Railroad influence has been used in political offices through the issuing of free passenger tickets, etc. Various other minor abuses have centered around these corporations. The states have been powerless to provide a remedy, for the roads have been mostly engaged in interstate commerce, with which the states are forbidden by the Constitution to

interfere. To provide a remedy for the principal of these abuses, Congress passed the act of February 4, 1887, regulating certain practices of railroads and creating the Interstate Commerce Commission to enforce its provisions. The commission is composed of five commissioners appointed by the President. The commission sits as a court and adjudicates complaints arising between railroads or between citizens and railroads, and involving principles covered by the act. A Statistician attached to the commission publishes annual statistics of railroads, covering the extent, the amount, and value of their stock and bonds, expenses of management, receipts, etc. The act applies only to the railroads lying in more than one state.

The Fish Commission. — The Fish Commission was created by act of Congress in 1870. Its chief is the Commissioner of Fish and Fisheries. There is also an Assistant Commissioner. This commission stands in the same relation to the fishery interest of the country as does the Department of Agriculture to agricultural interests. It investigates the food, habits, and enemies of fishes; experiments concerning the best methods of their capture, the best kind of baits, apparatus, etc. It collects statistics of fish and fisheries of the whole country. Probably its most important service, however, is the propagation and distribution of food fishes. Under its direction are hatched and liberated millions of the young of the best food fishes in the various inland waters of the United States. Rivers suitable for black bass, shad, carp, or other food fishes, but not having them in their waters, are supplied. For

these purposes the Commission owns and manages various fish hatcheries, fish-distributing vessels, etc.

The Civil Service Commission. — To correct the wasteful and demoralizing spoils system in vogue ever since the first administration of Jackson, Congress passed, January 16, 1883, "an act to regulate and improve the Civil Service of the United States." Under the provisions of this act the President appoints three commissioners, only two of whom may be of the same political party, to administer the act. This commission provides examinations for testing the fitness of applicants for public service. Appointments in those branches of the government coming under this act can be made only from persons who have passed the civil service examination successfully. Adherence to a political party has no weight in the selection of employees.

The Government Printing Office. — In order that there may be intelligent legislation and administration, an extensive system of reports is required. Each department, bureau, and division makes an annual report. The proceedings of Congress are reported *verbatim* and published. The printing and binding are done by the government through the Government Printing Office, established for that purpose. The Bureau of Printing and Engraving, which is under the Treasury Department, does no part of this work. Its duties are limited to the engraving and printing of bank notes, stamps, etc. The chief of this office, the Government Printer, is appointed by the President.

The National Museum, Smithsonian Institution, and Bureau of Ethnology. — In 1829 James Smithson be-

queathed the whole of his property, something over half a million dollars, "to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men." This fund, held by the United States, now amounts to over \$700,000, yielding six per cent. per annum. In 1846 Congress determined to devote this gift of Smithson to the founding and support of the museum now known as the Smithsonian Institution. The National Museum was established in 1846, and is supported by annual appropriations by Congress. In 1879 Congress created a special bureau under the Secretary of the Smithsonian Institution, to be called the Bureau of Ethnology, to make researches in North American Anthropology. This work is supported by annual appropriations. The National Museum, Smithsonian Institution, and Bureau of Ethnology, though distinct institutions, are under substantially the same management.

The Library of Congress. — The Librarian of Congress is an independent officer and reports directly to Congress. He has complete control of the Congressional Library. There is a law requiring that two copies of every book, pamphlet, newspaper, photograph, etc., copyrighted in the United States, shall be sent to the Congressional Library. It thus receives large and valuable additions yearly. The library now numbers over half a million volumes. A new home for these books, near the Capitol, has just been completed, whither they will soon be moved. This is the finest library building in the world.

CHAPTER IX

THE FEDERAL JUDICIARY

Necessity for a Federal Judiciary. — In forming the Constitution the framers of our government were controlled, as we know, by the principle that the powers which belong to all governments can be most safely and satisfactorily exercised by dividing them according to their nature among three separate branches, the executive, the legislative, and the judicial. Under the Articles of Confederation this maxim of government had been disregarded. The old Continental Congress had been given under that plan not only legislative powers, but also those executive and judicial powers which the states had yielded to the central government. The lack of a federal judiciary was, as Justice Story says, "one of the vital defects of the old confederation." Hamilton, the expounder of the Constitution, said: "The laws were a dead letter without courts to enforce and apply them."

A national system of courts was necessary in order that there might be some power :

First, To give to national laws an interpretation that would be uniform throughout the land. If there were to be as many independent courts as there were states,

each giving federal decisions on causes arising under the same national laws, nothing but confusion and contradiction could arise.

Second, To settle disputes between the states and citizens of different states.

Third, To construe and interpret the Constitution itself, and decide all disputes arising under it. As the Constitution is the supreme law of the land, no legislative act of Congress contrary to it can be valid. Hence, the necessity of some power which should have authority to determine the constitutionality of an act when brought into question.

Fourth, There was the necessity for some means to determine the constitutionality of any act of a state legislature, and thus to enforce upon the states the restrictions laid upon them. The manifest necessity of such a power may be best stated by using Hamilton's own words :

“What would avail restrictions on the authority of the state legislatures without some constitutional mode of enforcing the observance of them? The states, by the plan of the Constitution, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money, are specimens of this kind. No man of sense will believe that such prohibition would be scrupulously regarded without some effectual power in the government to restrain or correct infractions of them. This power must be either a direct negative on the state laws, or

an authority in the federal courts to annul such as might be in manifest contravention of the articles of Union." "These courts are to be the bulwarks of a limited constitution against legislative encroachments."

The Supreme Court.—The establishment of the federal judiciary is given in a few words in the Constitution: "The judicial powers of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish."

In pursuance of this clause, Congress passed, in 1789, what is known as the "Judiciary Act," the first section of which reads: "The Supreme Court of the United States shall consist of one Chief Justice and five Associate Justices." This act also established the inferior federal courts, and defined and fixed their fields of jurisdiction, *i.e.*, the class of cases which they should have power to try.

The Supreme Court stands at the head of our national judiciary. Its field of jurisdiction is the construction and exposition of the Constitution of the United States. Justice Miller of this court, speaking of the high character of the duties performed by it, has said: "This court, whether we take the character of the suitors that are brought before it, or the subjects of litigation over which it has final jurisdiction, may be considered the highest the world has ever seen. It has power to bring states before it, states which some of our politicians have been in the habit of considering sovereign, not only when they come voluntarily, but by federal process they are subjected, in certain cases, to

the judgment of the court. Whatever these states may have been at the time of the formation of the Constitution, they now number their inhabitants by the millions, and in wealth and civilization are equal to many of the independent sovereignties of Europe."

There have been a number of changes in the structure of the Supreme Court since its formation. At present there are nine justices instead of six. An annual term of the court is held, beginning on the second Monday of October and continuing until about May. Six justices constitute a quorum. Daily sessions, with the exception of Saturdays and Sundays, are held from 12 to 4 in the Capitol building at Washington. Every Saturday morning the justices meet in consultation and decide the cases argued during the week. The preparation of the written opinions of these cases is then assigned to the different justices. The decisions are publicly announced on Monday morning of each week.

As will be seen by Section 2 of Article III of the Constitution the jurisdiction of the Supreme Court is of two kinds: First, that determined by the subject matter of the suit, that is, "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls;" and "to all cases of admiralty jurisdiction." Secondly, it has a jurisdiction determined by the character of the parties involved, irrespective of the subject of the suit. That is, "to controversies to which

the United States shall be a party; to controversies between two or more states, between a state and citizens of another state; between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or citizens thereof, and foreign states, citizens, or subjects." By the Eleventh Amendment it was declared that the above grant of jurisdiction should not be so construed as to permit a suit against one of the states by citizens of another state, or by citizens or subjects of any foreign state.

Under the first class of cases it will be seen that whenever the federal Constitution, or any act of Congress is brought into question in a law suit, such suit may be brought in a federal court, or, if begun in a state court, may be removed to a federal tribunal. Under the second class, when the suit is between citizens of different states, or between different states, no matter what the point involved, a federal court has jurisdiction on the ground that the chances will be that such a court will be more impartial than a court of one of the states involved.

The jurisdiction of the Supreme Court may also be divided into two classes in another respect. That is, it is either original or appellate. By original is meant that the case is begun or originated in that court; while by appellate is meant that the suit is first tried in one of the lower courts, and brought to the Supreme Court by appeal.

The Constitution provides that: "In all cases affecting ambassadors, other public ministers, and those in which a state shall be a party, the Supreme Court shall

have original jurisdiction." In all other cases the jurisdiction is appellate. Thus it is that by far the greater number of cases tried before this tribunal are appeal cases. These cases may come to it either from a lower federal court or by appeal from the highest courts of the individual states; for it is provided by law that when the validity of a federal right or power or privilege is involved in the decisions of a higher state court, and the decision is adverse to such a right, power, or privilege, there shall then be a right of appeal to the Supreme Court.

We have already spoken of the enormous service which the Supreme Court has rendered in the development of our Constitution. By giving a broad and liberal interpretation to its provisions it has made the federal government an efficient agent for all national purposes. By vindicating its right to hold unconstitutional acts of Congress void and of no effect, it has not only protected citizens and states against such unconstitutional exercise of power and thus preserved the proper relations between the states and the federal government, but it has rendered state nullification unnecessary as well as illegal. By denying the right of a state to interfere in any way with the operation of the central government or of any of its agencies, it has kept the federal power free from all improper interference.

In determining whether or not a given law is constitutional the Supreme Court does not examine as to its expediency as a public measure. That is a question solely for the legislature to determine. The court is guided entirely by the question whether the subject

matter of the law is one which, according to the Constitution, is within the controlling competence of the state or federal legislature by which it was enacted. Thus, when the Supreme Court declared the federal income tax law invalid in 1895 it may perhaps have thought that such a measure was a wise and beneficial one; but it held that it was not properly apportioned according to the Constitution, and hence could not be recognized as law.

In order that the Justices of the Supreme Court may be placed beyond all temptation of being influenced by party politics, they are appointed by the President for life, and have a fixed salary which cannot be reduced by Congress so as to apply to any judge on the bench at the time the reduction is made. If, however, any Justice should be guilty of gross misconduct he may be impeached, and, if found guilty, removed from office. The judges of all lower federal courts likewise hold office for life, and have fixed salaries. This is beyond doubt an extremely wise provision. When judges are elected or appointed for a short time they are open to the temptation so to frame their decisions as to retain popularity with the people, and thus render their reelection probable. Such influence is necessarily destructive to judicial impartiality in many cases. Furthermore, those qualities which make the best judge are not generally those that most appeal to the average voter, and hence there is never so good a chance that an elected judge will be as able as an appointed one.

Inferior Federal Courts. — The Constitution provides

that there shall be a Supreme Court of the United States, but leaves it to Congress to determine from time to time what inferior courts shall be created. In accordance with this power Congress has established such courts and determined the respective jurisdictions to be enjoyed by them.

As at present constituted, there are, besides the Supreme Court, three classes of federal tribunals: District Courts, Circuit Courts, and Circuit Courts of Appeals.

District Courts. — The entire territory of the United States is divided into judicial districts. Many single states form a judicial district, while some are divided into two, and others into three districts. The number of districts has varied. In 1898 there were between sixty and seventy. To each of these districts is given a court and a District Judge. These form the lowest grade of federal courts.

Circuit Courts. — These judicial districts are grouped into nine circuits. For example, the fourth circuit includes the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina. For each circuit there are two Circuit Judges. One of the Justices of the Supreme Court is also allotted to each of the circuits, who, after the expiration of the Supreme Court term, visits his circuit, and tries the more important cases which may arise in that circuit. The Circuit Court may be held by a Circuit Judge, the Supreme Court Justice, or the District Judge of that district in which the court is sitting, or by any two of them, or all of them, sitting together. The Circuit Courts form the next series of the federal courts higher than the District Courts.

Circuit Court of Appeals. — Above the Circuit Courts there is in each circuit a Circuit Court of Appeals, consisting of three Judges, namely, two Circuit Judges of that circuit, and the Justice of the Supreme Court assigned to that circuit. In the absence of one of these, a District Judge may take his place. The court holds one term annually.

Jurisdictions. — The relation between these different grades of courts is not difficult to explain. In general, being all federal courts, they have cognizance only of matters over which the judicial power of the United States has been extended by the Constitution.

The District Courts, constituting the lowest grades, have no appellate jurisdiction. Their original jurisdiction is largely over cases connected with revenue laws, admiralty matters, suits against consuls, cases arising under the postal laws, and criminal prosecutions for violations of federal laws.

The Circuit Courts likewise have only original jurisdiction. This embraces an extensive control of criminal cases which is, for the most part, concurrent with that of the District Courts. Secondly, they have a civil jurisdiction over all civil suits, involving the construction of federal law, where the amount involved is at least \$2000. Where, however, the United States government is the plaintiff, the money limit does not apply. The same jurisdiction is given also to the Circuit Courts, whether or not a federal law is involved, provided the suit is one between citizens of different states, or between citizens of the United States and foreign states, or citizens thereof.

Unlike the District and Circuit Courts, which have only original jurisdiction, the Circuit Courts of Appeals, as their name imports, have only appellate jurisdiction. This extends to such cases as come to them from the District and Circuit Courts. In all cases where the jurisdiction of the lower courts is questioned, in prize cases, conviction of a capital or otherwise infamous crime, or where the construction of the federal constitution or a treaty is involved, there is the right of an appeal from the District and Circuit Courts directly to the Supreme Court. In all other cases the appeal lies to the Circuit Courts of Appeals.

The decisions of the Circuit Courts of Appeals are final in all cases which have arisen solely on account of the citizenship of the parties, and also in all cases arising under the federal patent, revenue, criminal, and admiralty laws. Also in all other cases where not more than \$1000 is involved.

In all cases not included in the above, an appeal may be taken to the Supreme Court. Also, in those cases in which an appeal is not specifically given, the Supreme Court can, of its own motion, if it deems the point of law which is involved to be a sufficiently important one, order that the case be sent up to it for decision; or the Circuit Court of Appeals can itself submit to the Supreme Court for decision law points involved in a case before it, and, in such cases, it will be bound by the decision given.

Much of the jurisdiction of these lower federal courts, especially that based upon the citizenship of the parties, is concurrent with that of the state courts. But there

are elaborate provisions which permit a party, if he desires, to remove such suits when begun in a state court, to a federal court.

It will be well to repeat that besides these federal courts, all of the states have their own systems of courts to interpret their own laws; and that these courts are entirely distinct from the United States courts and have different judges.

The District of Columbia being under the exclusive control of the federal government, appeals lie from its courts to the Supreme Court. For the same reason, appeals may be had to the Circuit Courts of Appeals and to the Supreme Court from the territorial courts.

For the purpose of adjusting claims of private persons against the United States, there has been established at Washington a Court of Claims, consisting of five Judges. Appeals lie from it in some cases to the Supreme Court, and in others the court merely prepares a statement of what it finds to be the facts as shown by the evidence presented to it, which "finding of facts," as it is termed, is sent to Congress for such action thereon as may seem fit.

CHAPTER X

STATE AND LOCAL GOVERNMENTS

THE plan of this book does not make it necessary to explain in detail the organization and methods of administration of our state and local governments. Indeed, inasmuch as each state has its own peculiar problems and governmental characteristics, it is doubtful whether a satisfactory detailed account can be prepared which will be adapted for use throughout the Union. After that general knowledge has been gained which it is the purpose of the present chapter to convey, the scholar should obtain, by personal inquiry and observation and by the consultation of books specially devoted to his state, those particular facts, a knowledge of which is essential to his complete political education.

Functions of the States.—Each state has its separate government, with full control over all matters except those which have been granted to the United States or prohibited to it by the Constitution. These states vary in size from that of Texas, the largest, with an area of 265,780 square miles, to that of Rhode Island, the smallest, with 1250 square miles; and in population from that of New York, of nearly six millions, to that of Nevada, of about forty-six thousand. Texas alone

is greater territorially than either France or the German Empire.

Since the states have control of all matters except the few which the federal constitution prohibits and the few general powers given to the federal government, it will be impossible to enumerate, as was done in the case of the United States, all of the different subjects over which the state governments might, if they saw fit, extend their authority. They can, if they desire, go to the extremes of state socialism. In a general way it may be said that they regulate nearly all of the private relations of their citizens, the laws of husband and wife, principal and agent, and of contracts. They provide for the detection and punishment of crimes. They control and mainly support the militia of the country. Railroad, banking, insurance, and other corporations are chartered and controlled by them. The construction and maintenance of roads, the determination of the rights of suffrage, and the control of their own elections are among the exclusive powers of state governments. Our extensive systems of public schools are likewise created and maintained by the states. The state takes care of the defective classes, of the insane, paupers, etc., and, in general, performs all those ordinary duties which naturally pertain to the internal affairs of any state. It also creates and controls all the systems of local governments, of which we shall presently speak. Hence it will be seen that though the ordinary citizen is, to be sure, controlled as to national matters by a national government, he may possibly never come into direct contact, except through the post office, with a

federal official or a federal agency. He assists, indeed, in defraying the expenses of the federal government, but this he does almost unconsciously when he buys goods, the prices of which have been somewhat raised because of the customs or internal revenue duties which have been levied upon them.

State Governments. — What form of government the people of a particular state may create is wholly within their own control, except for the one limitation that it must be republican in form. If the people of a state should attempt to erect any other sort of political control, as, for example, a monarchy or absolutism of any kind, or if any such government should be imposed upon them by an outside force, or by a lawless band of rebellious citizens, it would be obligatory upon the United States to take steps to secure the overthrow of such a government and the establishment of a republican one in its place. The provision of the Constitution is that the federal government shall guarantee to every state in this Union a republican form of government, and shall protect it against invasion, and, on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence. The duty on the part of the United States of guaranteeing a republican form of government carries with it the right of the federal power to decide, when there is a contest, which of two opposing governments in a particular state shall be recognized as the legal one. The duty of protecting a state against foreign invasion or domestic violence is to provide for those emergencies which a state may not be able to meet

by its own police or militia. It will be seen that in such cases the United States is to assist only when its aid is asked by the state governor or legislature.

In general the governments of the states closely resemble in their organization that of the federal government. All the states have :

1. A Constitution.
2. A legislature of two Houses.
3. An executive, termed a Governor. Other executive officials are the Lieutenant Governor (in almost all cases), a Secretary of State, Treasurer, etc.
4. A system of local government in counties, towns, cities, etc.
5. A body of state laws enacted by the respective state legislatures.
6. A judicial system of courts from which no appeal can be had to the United States courts except in those cases which have been mentioned in the preceding chapter.
7. A system of local taxation.

All states have public debts, which they may, and sometimes do, repudiate. They can be sued only by other states.

State Constitutions. — As the federal Constitution is the supreme law of the United States, so the state constitution is the highest law of the state. The constitutions of the original thirteen states were formed after the model of the charters enjoyed by the New England colonies. Rhode Island and Connecticut adopted their charters as constitutions without any change, except, of course, the annulment of obedience to the English

King. All subsequent constitutions have been closely modeled after the first thirteen. The modes of amendment of constitutions differ in different states, but in all, amendment is much easier of accomplishment than in the case of the federal Constitution. This is shown by the fact that since 1776 there have been adopted by the states over one hundred complete constitutions, and over two hundred partial amendments; while since the passage of the first ten amendments in 1789, there have been but five additional amendments to the federal Constitution. Some states provide that the constitution shall be submitted to the people for amendment at the end of certain intervals of time. In the larger number of cases a majority of the popular vote is required for ratification of a constitutional amendment. State constitutions show a tendency to become longer, and to regulate a constantly increasing number of subjects.

A normal constitution has the following provisions:

1. A definition of the state boundaries.
2. A bill of rights (guaranteeing private rights, such as freedom of the press and speech, trial by jury in criminal cases, right to assemble and petition, etc.).
3. A frame of government, an enumeration of officers and powers of legislature, executive, courts of justice, etc.
4. Miscellaneous provisions, relating to the administration of schools, militia, taxation, debts, local government, corporations, amendments, etc.

State Legislatures. — The legislature in all the states consists of two Houses, of which the upper and smaller branch is called the Senate, and the lower and more

numerous branch usually the House of Representatives, though in six states it is termed the Assembly, and in three the House of Delegates. The members of both Houses are elected by popular vote, but Senators are usually elected for longer periods, and frequently higher qualifications for them are required. States are divided into districts for election purposes, and, though members of the legislature may offer themselves for election from any district, it has become the invariable custom for them to be elected only from the districts in which they reside. Universal manhood suffrage, that is, the right of all male citizens over twenty-one years of age to vote, is the rule, though in eight states paupers have no vote, and in a few a certain amount of education is required (generally enough to read the state constitution). The number of members in the state legislatures varies greatly. In the Senate, Delaware has the smallest number (9), and Illinois the largest (51). In the lower House, Delaware has likewise the smallest number (21), while New Hampshire has the greatest (321).

In Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and South Carolina, the legislatures sit annually; in all other states, biennially. The length of their sessions varies greatly. In some states this is at the discretion of the legislature itself; in others, a maximum is fixed by the constitution running from forty to one hundred and fifty days.

The Lieutenant Governor of the state is *ex officio* President of the Senate. As in Congress, business is conducted by means of committees, which are in both Houses elected by ballot. The state legislatures have

full charge and control of all local governments within the state. The Senate has the power of trying impeachments of state officials. It also ratifies appointments of the Governor. In all states, except four, acts of the legislature require the signature of the Governor before they become laws. To pass a bill over a veto requires in some states a two-thirds vote in both Houses, in others a three-fourths vote, and in others a majority vote of the total number of members.

State Executive. — The chief executive of the state is the Governor. Other chief officials are the Lieutenant Governor, Treasurer, Attorney General, Secretary of State, Auditor, and Superintendent of Public Instruction. The term of office of the Governor varies in different states from one to four years. He has but small powers of appointment, most of the state officials being elected by the people. In all but four states he has a veto on legislation. He has generally the power of pardoning. Where there is a Lieutenant Governor, he is President of the Senate.

State Judiciary. — The state judiciary includes three sets of courts :

1. A Supreme Court of Appeals, the highest court, from which cases involving federal questions may be appealed to the Supreme Court of the United States.
2. Superior courts of record.
3. Various local courts, such as county courts, corporation courts, etc.

Each state recognizes the judgments of other states, and gives credit to their public acts and records, and delivers up to justice, on demand of the executive,

criminals fleeing from other states into her borders. In most of the states the Supreme Court Judges are elected by the people, though in eight they are appointed by the Governor.

The Attorney General conducts cases in which the state is a party, and manages other legal business in which the state is interested.

Local Government. — In the chapter on government we learned that the people of the United States owe allegiance to two systems of government: the one a central national government, the other the state governments. We have now to mention a third system of government, namely, local government; for citizens of the United States live under three distinct governments: first and highest, the United States Government; second the state government, and third, the local government. It is about local governments in the United States that we shall learn in this section.

Just as the whole United States is divided into many sections, each section being a state or territory, so each state is in turn, for convenience in the administration of its government, divided into small local areas, each division managing those affairs which pertain to its own area. Many of these divisions were not formed by dividing up the states. The divisions came first, or sprang up naturally within the states as soon as the colonies were settled. Social governments were the first governments formed in the settlement of our western territory. Dr. Edward Bemis has described the beginnings of government in a new state in the following interesting manner:

"The genesis of local government in Western hamlets is very simple. First comes the settler who, axe in hand, clears the ground for his humble dwelling and plants whatever seed he has brought with him. Then comes another settler and another, until perhaps a dozen families are established near. Two wants are now felt: roads, or at least paths from house to house, from hamlet to market town, and a schoolhouse for the multiplying children. There is no strong central authority to provide these things, but the settlers meet and vote to tax themselves. The services of a supervisor, collector, clerk, constable, and justice of the peace are required." This is the beginning of the township and county. As population increases, other wants arise which only a stronger government can supply. A territorial, and then a state, government are consequently formed.

The principal duties of local governments are those of education, police, sanitation, charity, the construction and maintenance of public roads, the administration of justice, the assessment and collection of taxes, etc.

There are three types of local government in the United States: *first*, the New England type, in which the unit of government is the town or township; *second*, the Southern type, in which the unit is the county; and *third*, the Western system, in which the New England and Southern systems are combined.

Local Government in New England. — Here the unit of government is the township, or town, as it is usually called. There are few towns exceeding five square miles in area, and the population is generally less than 3000. The New England township is therefore not a

thickly settled area. When a town becomes closely settled it is incorporated as a city.

In the New England towns the people govern themselves directly. The town or township form of government is thus that of a pure democracy.

The supreme governing power of a town is in the town meeting, composed of all qualified voters of the town. The town meeting is held in the spring of each year. After the choice of a moderator, officers are elected for the ensuing year, reports of officers for the past year are read, and the amount of taxes to be raised and expenditures to be made during the year are determined. The officers are the Selectmen, three, five, seven, or nine in number, who constitute the executive officers of the town and administer the ordinances passed by the town meeting; a Town Clerk, who keeps a record of the proceedings of the town meeting, and a record of births, deaths, marriages, etc.; a Treasurer, Assessors, and Collectors of Taxes, Constables, and various other petty officers. Several offices are frequently given to the same individual.

Local Government in the South. — Here the town (township) does not exist, except in a few instances. The unit of government for performing local duties is the county, which is much larger than the New England township. The county government is managed by a board of County Commissioners. These are elected not in open meeting, as are the town officers, but by ballot. County government is therefore a representative government. The county, wherever found, is a judicial district. The chief officer for executing the

decrees of the county judiciary is the Sheriff. Other county officers are the Treasurer, Assessor, etc.

Local Government in the West.—Here, as before stated, we find the New England and Southern systems combined, but combined in such various degrees as to render impracticable any attempt to describe them more particularly. In consequence of grants of land by the federal government to Western states for education, local areas for the administration of these funds have been formed. These are called school districts. Their boundaries coincide with the boundaries of the townships and counties, though a number of school districts may be in one county or township.

Too much stress cannot be laid upon the necessity of cultivating an intelligent and public-spirited interest in one's own local government. These are the affairs which are not only the best known and whose results are the most apparent to every one, but they are important in that it is from them that ultimately spring all the evil, as well as the good, features of our whole political life. If only the proper persons are in charge of local affairs, and a proper sentiment prevails, it is almost certain that the state governments will be properly officered and administered; for it is in the local centers that the state officers are chosen; and if state and local politics are in a healthful condition, it is a very safe guaranty that national politics will not be essentially bad.

City Government.—The proportion of people in the United States who reside in cities is increasing. In 1790 there were only 13 cities of 5000 inhabitants or

over, and none with 40,000. Now there are over 500 that have a population exceeding 5000, and 28 with a population of over 100,000. In 1790 3 per cent. of the total population resided in cities of over 8000 inhabitants, while to-day over 25 per cent. live in cities of this size or over.

When any small area becomes thickly settled, and a certain population is reached (which varies in different states), an appeal may be made to the state legislature to grant a charter for incorporating the area as a city. This enables the incorporated district to act independently of the county or township, to levy municipal taxes, and carry out public improvements, and, in fact, to have its own local government.

Rapid as has been the growth of cities, the duties required of city governments have increased still faster. It would be difficult to give a complete list of these functions, but the more important of them are the following :

1. The collection of municipal and state taxes.
2. The establishment and care of public schools.
3. The administration of justice.
4. Police supervision.
5. The maintenance of a fire department.
6. The care of streets.
7. Sewerage.
8. Water supply.
9. Public parks.
10. Prisons.
11. Supervision of the liquor traffic.
12. Regulation of street railways.
13. Enforcement of building regulations.

14. The supervision of charities, hospitals, asylums, etc.

The form of government of all of our large cities is much the same. It is a reproduction of the state governments. First, there is a Mayor, who is the chief executive, and who is elected directly by the people of the city. His term of office is sometimes only one year, though more often two, three, or four years. In almost all cases he has a veto on acts of the city legislature, which veto may, however, be overridden by a two-thirds vote. Other subordinate executive officials are the Treasurer, Collector of Taxes, Chief of Police, Health Officer, Superintendent of Education, etc. These are in part elected by the people, and in part appointed by the Mayor or elected by the city legislature. Practice varies in this respect in different cities.

City legislatures are of one or two houses. The smaller cities usually have one, and the larger cities two. The legislature is usually called the City Council, the upper branch being termed the Board of Aldermen, and the lower and more numerous branch the Common Council. The members of the City Council are elected by the people, and its acts are usually known as ordinances.

City judges are usually elected by the people. The administration of the various duties of municipal government is generally given to special boards of officers, such as the Police Department, Fire Department, etc. For election purposes cities are divided into wards, and the wards into voting precincts.

Municipal Problems.— Our methods of city government have proved the least successful of any of our institutions. Corruption and grave abuses exist in almost all of the larger cities, and thus the problems connected with city government have become especially grave.

The point constantly to be remembered is, that, aside from the punishment and prevention of crime, the administrative duties of a city are almost wholly of a purely business character, that is, are financial and economic in nature. The city differs very little in this respect from a vast business corporation. It has particular duties to perform, such as have been mentioned, and the only problem is that these duties shall be performed in an economical way, and that both the city's expenditures and revenues shall be placed upon a proper business basis. In any ordinary commercial company the stockholders have so vital a financial interest that in general they make it their business to see that the proper directors are chosen, and that, when chosen, they perform their duties in a proper manner. Exactly the same reasons should induce the inhabitants of a city to see that the city corporation, of which they are in fact the stockholders, properly performs its duties. Unfortunately, owing to the large number of shareholders in a municipal corporation, some are apt to think that their individual influence will be so insignificant as not to be worth the effort of exerting it, while others, who realize that their interference might have some effect in remedying existing evils, feel that the small personal gain that might

accrue to them as individuals, by the change, would not warrant the expense of time necessary for their interference. It is unnecessary to state that such motives are unworthy of a good citizen. Public spirit and a sense of justice should impel every true citizen to see that the politics are such as secure a fair distribution of the benefits and burdens of government, and make the former as great and the latter as light as possible.

It is the absence of public spirit that renders possible in many of our larger cities the formation of corrupt bands of professional politicians, called "rings," which obtain and keep absolute control of the government of these cities, and by selling contracts for work at extravagant rates, by accepting bribes, and by other corrupt means, dishonestly enrich themselves and their followers at the expense of the people. Corrupt judges are placed upon the bench, business men and corporations are blackmailed, liquor sellers and keepers of disreputable houses are released from proper police regulation in return for certain assessments, and in every conceivable way not only are the people subjected to excessive taxation, but the morals of cities are debauched by a lax and dishonest administration of justice.

The Initiative and Referendum. — There are some who think that not only should the people be permitted to elect all public officials, but that all the more important laws should be submitted to their direct vote before going into effect, and also that in those cases in which it is not specifically provided that their consent shall be sought, a certain number of them may demand that any

particular measure designated by them shall be drafted by the legislature and submitted to their vote. This method of enacting law by a direct popular vote is termed the Referendum; while the proposing of measures by the popular voice is termed the Initiative. Both of these methods are used in the Swiss Republic with considerable success. In our own country the Referendum is practically employed when amendments to state constitutions are submitted to popular vote for ratification, and when, in local matters, the people of particular places are permitted to indicate their opinion by a direct vote in regard to the sale of liquor, termed local option.

The advantages claimed for the Referendum and the Initiative are :

1. That they allow a more perfect expression of the popular will than can be obtained indirectly through the action of elected representatives.
2. That they educate the people in political matters by enlisting their direct aid in the enactment of the measures proposed to them.
3. That they check bribery, lobbying, and corruption in the legislature by enabling the people to reject any measure which is not really a good one, and which has obtained the approval of the legislature through ignorance or corrupt means.

The idea of those who advocate the Referendum is not that all laws should be passed upon by the people, but only certain specified kinds of laws, together with all others which may be demanded specially by a certain number of qualified voters.

The objections to direct legislation of this sort are :

1. That it is but seldom that the people have sufficiently accurate knowledge to pass intelligently upon legislative proposals.

2. That even if it be granted that they have this knowledge, experience shows that it is almost impossible, except as to the most striking measures, to arouse in the people an interest sufficient to induce them to go to the polls.

3. That if this power should exist it would not only cause the people to place less importance upon the quality of the representatives which they would send to their legislatures, but that the members of the legislature themselves would become less careful of the character of their acts if they should know that such acts were to be revised by the people before taking effect.

Most people in this country admit that in the ratification of constitutional amendments direct legislation may play a proper part, and also that it may be of value in the control of a few purely local matters, such as schools, liquor traffic, etc. But in other respects the objections to this method of lawmaking seem to be decisive. Almost all the matters of federal legislation, such as the tariff, regulation of commerce, banking and appropriations, are far too complicated to be acted upon intelligently by the people at large. Though the same is not true to such an extent of most matters which come before state legislatures, yet the other objections are of greater weight. It is a very general evil in our states that the legislatures are not composed of sufficiently

capable and honest members, and a recognition of this fact by the people themselves is shown not only by the sense of relief experienced by most of them when sessions of their legislatures come to a close, but by the open distrust of them which is shown in the incorporation in the state constitutions of long lists of matters over which the legislatures shall have no control. Any measure, therefore, which would tend to decrease the interest of the people in their lawmaking bodies, or to lessen the sense of responsibility of the lawmakers themselves for the character of their work, would inevitably operate to lower still more the character and capacity of the legislative members who would be elected. If the people could be depended upon rigidly to scrutinize and intelligently to vote upon all matters submitted to their approval, and to demand the submission to them of those measures which the legislature itself did not draft and propose to them, then the evil of a poor, corrupt, and irresponsible legislature would be reduced to a minimum. But, as said above, this they cannot be trusted to do, even were they qualified to do so, and the result would be that despite their legal power to prevent the passage of bad laws and to demand the enactment of good ones, the laws would not be improved.

CHAPTER XI

GOVERNMENT REVENUE AND EXPENDITURE

A GOVERNMENT is an enormous business enterprise, maintained and operated by its citizens, in order that certain duties of a general interest and benefit may be performed. The magnitude of the work transacted necessarily requires the expenditure of vast sums of money. The chief source from which these sums are derived is taxation. Taxes have been defined to be "the legally determined and legally collected contributions of individuals for meeting the necessary and general expenses of the state." In the large majority of cases this is a good definition, but in a few instances it is too narrow. There are some taxes that are levied not primarily for the purpose of raising an income to meet the expenses of the government, but to subserve some other purpose. For instance, the maintenance of high duties on many of the articles imported into the United States from foreign countries has for its main purpose the protection of our industries from European competition. The large revenues that are derived therefrom are incidental. High liquor licenses, also, are maintained for the express purpose of lessening the consumption of intoxicating beverages.

The aim of every good government is to distribute its

burdens of taxation, as well as its benefits, fairly and equitably among its citizens. It is the duty of every citizen to assist, by an intelligent, honest, and disinterested vote, in the realization of this aim. Equality of taxation means equality of sacrifice. Each person should contribute toward the support of the government in proportion to his means and the benefits enjoyed. It is the duty of every citizen, first to see that just and expedient tax laws are passed, then to pay his proper proportion, and lastly, to see that his neighbors likewise contribute their share. The aim to obtain an equitable system of government revenue and expenditure has been the great motive force which, in the past, has urged the people forward in their efforts to secure popular forms of government.

The power to tax is legislative, and according to our theory can be exercised only by representatives directly elected by the people. A government to be stable and efficient must possess adequate powers for the collection of its revenue. The miserable condition to which the old Confederation was reduced by reason of the inadequacy of its powers in this respect has already been discussed. Says Fiske: "Between the old Continental Congress and the government under which we have lived since 1789, the differences were many; but by far the most essential difference was that the new government could raise money by taxation, and was thus enabled properly to carry on the work of governing."

The sources of government revenue other than taxes are various, and differ in different countries. In our

consideration of the revenues and expenditures of our national, state, and local governments we shall have occasion to notice the various means by which their treasuries are filled.

Federal Taxes. — The federal government raises its revenues, independently of the state governing bodies, from different sources, and by a different set of officials. Besides taxation, the principal source of its revenue is from the sale of public lands. Federal taxes are of two kinds :

1. Customs duties.
2. Excise or internal revenue duties.

Of these, much the greater sum is raised from customs duties. For the year 1896 the total receipts of the United States Treasury were \$409,475,408. Of this \$160,021,752 was derived from customs, \$146,762,865 from the internal revenue duties, and \$82,499,208 from the Post Office.

Customs or tariff duties are taxes which have to be paid on a large number of goods imported into this country from foreign countries. These charges are collected by government collectors, stationed in all our principal seaport cities, who inspect all incoming vessels and determine the amounts to be paid upon the cargo, according to the rate determined by Congress. This system constitutes the so-called protective tariff policy of our country. Those commodities not so taxed are said to be on the "free list." How much duty shall be levied, and on what articles, are some of the chief questions upon which the Republican and Democratic parties differ, the former favoring high, and the latter

low, rates, that is to say, merely enough to support the government, or, as it is termed, "a tariff for revenue only."

Internal revenue duties are those taxes collected by the government from its own citizens upon a small class of articles produced in this country. The chief items of this class are distilled liquors, tobacco, and oleomargarine. These duties are collected by government collectors stationed in every United States district, who visit the distilleries, collect the taxes, and see that the law is enforced. In several Southern states attempts to evade the law are very frequent and difficult of detection.

State and Local Taxes.—These are generally, for convenience, collected at the same time, and by the same officials. The Constitution of the United States forbids the states to derive a revenue from duty upon goods imported or exported. The states are, therefore, for the most part, restricted to a direct tax on property for the support of their governments.

The general method for raising this tax is as follows :

The legislature of the state, having determined what income is needed, apportions this sum among the counties, or, in New England, directly among the townships, in proportion to the value of the property situated within them, or establishes a certain percentage tax on all property, to be collected in the same manner. So, similarly, the counties apportion among the cities and townships within their areas, in proportion to the value of their taxable property, not only what they have to pay to the state, but also the sums

they have to raise for county purposes. Thus, when the township or city authorities assess and collect taxes from the individual citizens, they collect at one and the same time three distinct taxes—the state tax, the county tax, and the city or township tax. Retaining the last for local purposes, they hand over the two former to the county authorities, who, in turn, retain the county tax, handing over to the state what belongs to it. Thus trouble and expense are saved in the process of collection, and the citizen sees on one tax paper all that he has to pay.¹ The chief tax is the property tax, based on a valuation of property, generally of all property, real and personal. Of this, by far the greater sum is realized from the tax on real property (land and buildings). Cities and other local subdivisions are more and more raising their revenues from the sale, taxation, or operation of such public franchises and rights as street car lines, gas and water works. Those who fix the value of taxable property and thus determine the amount the owners are to pay are called Assessors. Those who collect taxes are called Collectors. The revenue of the states is seldom large in proportion to the wealth and number of the inhabitants, because the chief burden of administration is borne not by the states, but by the federal government, on the one hand, and the local subdivisions of the states on the other. The total revenue of all the states is barely one third that of the federal government.

Expenditures. — The expenditures of all the governing bodies, federal, state, and local, are kept entirely

¹ See Bryce's *American Commonwealth*.

distinct. Those of the federal government are for the benefit of all the states, while those of the other bodies are only for their individual benefit.

The chief federal expenditures (in addition to the postal system already considered and for the most part supported by its own revenue) are: (1) for interest on the public debt; (2) for pensions to disabled soldiers; (3) for the support of the civil branch of the government; (4) for the army and the navy.

Total expenditures for the year 1896 were \$434,678,654. The chief items were:

1. Interest on the public debt	\$35,385,029
2. Pensions	139,434,001
3. Army and Navy	78,093,822
4. Civil Service	87,290,787
5. Indians	12,184,921
6. Post Office	94,218,225

Money can be expended by the government only after it has been appropriated by Congress in its annual appropriation bills. The appropriation of supplies is the most important business that Congress transacts. Every year the heads of the different departments frame estimates of the amounts of money needed to support their departments during the following year, which estimates they send to the Secretary of the Treasury, who, after considering and revising them, transmits them to Congress in his "Annual Letter." This letter is considered by the Appropriation Committee, whose duty it is to frame bills for the appropriation of moneys. Though guided by these estimates,

appropriations frequently depart widely from them. After being reported to the House and passed, money bills are sent to the Senate, where they are invariably amended by increasing the appropriations, and returned to the House. A conference committee is then appointed from the House and Senate Committees on Appropriations, which, after mutual concessions, agrees upon such appropriations as will be passed by both Houses. The House then amends the bill as agreed upon, passes it, and sends it to the Senate again, which in turn passes it, and sends it to the President for his signature. All bills for raising money must, by the Constitution, originate in the House. Besides the appropriations for the expenses of government there is annually authorized a large expenditure for improvement of rivers and harbors. Many of the expenditures authorized by these bills are undoubtedly necessary, but others, as before remarked, obtain the general consent of the members, because each desires to increase his popularity at home by getting public money spent in his district.

The expenses of the state governments are not heavy, and are devoted to but few objects:

1. The salaries of officials.
2. Judicial expenditures.
3. The state volunteer militia.
4. Grants to public schools.
5. Public charities and institutions, as prisons, insane asylums, etc.
6. Interest on state debts.
7. Internal improvements and public buildings.

The methods of appropriations are similar to those employed by the federal government.

The expenditures of the local bodies, and particularly of the cities, are much larger, in proportion to their population, than those of the states, and are increasing at a greater rate than the increase of population. The objects of expenditure are numerous and very important. The chief ones are:

1. Interest on local debts.
2. Maintenance and care of the streets and roads.
3. Lighting of streets.
4. Police.
5. Salaries of officials.

The following are outlines of the receipts and expenditures of the state of Maryland for 1888, and of the city of Baltimore for 1887. These figures are given not because they of themselves possess any especial importance, but because from them can be obtained an idea of the activity of a typical state and city.

Maryland. — The total receipts were \$2,542,130; the expenditures \$2,016,060. The chief receipts were from:

General taxes	\$793,301
Licenses	487,969
Corporation tax	73,553
Railroad tax	58,455
Inheritance tax	57,767
Income from stocks and bonds owned	206,175
Fees	17,585

Baltimore. — The gross receipts into the treasury for the year ending December 31, 1887, were \$8,446,439, and were chiefly from the following sources:

Taxes	\$4,210,112
Public schools, tuition fees, etc.	6,766
Market houses, rent of stalls	58,287
Wharfage and rent of wharves	33,561
General licenses	44,609
Auction duties	7,431
Dividends on stock in B. & O. R. R.	130,000
Water rents	745,446
Passenger railway companies	132,167
From the state for public schools	147,403
Temporary loan	1,510,000
Receipts to pay interest on loans	896,704
Sale of stock	243,285

The total disbursements were \$8,403,930. Of this \$4,541,357 was spent on account of expenses of city government, the following being the principal items of expense :

Interest on the public debt	\$915,987
Expenses of law courts	118,906
Expenses of jail, magistrates, etc.	103,587
Public schools (less amount paid by state)	594,089
Expenses of poor	210,739
Police department	702,882
Street cleaning department	263,934
Fire department	214,226
Street lighting	221,203
Parks, etc.	52,080
Salaries	72,624
City Council	52,925

Nearly all of our state and local governments, as well as the national government, have large public debts, the interest payments upon which constitute one of the chief items in their lists of expenditures. The present

debt of the federal government is largely the result of the enormous expenditures occasioned by the Civil War.

The principal of the national debt is mainly in the form of interest-bearing bonds, held by the national banks and by private individuals. These bonds are of various denominations, and are promises of the government to pay the sum named on their face at the expiration of a certain period.

The debts of most of the states were contracted for the purpose of making such internal improvements as building roads, canals, subsidizing railroad companies, etc. The tendency now seems to be for states to withdraw from the money market as borrowers, and for the county and city governments to take their place. The debts of these latter are very large, and have shown a large increase during the last twenty years. They have been for the most part incurred in improvement and construction of public works, which, in most cases, have well repaid the debts incurred.

Note.—The act of Congress passed in June, 1898, for raising additional revenue to meet the expense of the war with Spain, imposes a graduated tax on inheritances, excise duties on beer, ale, flour, tea, tobacco, etc., license taxes on bankers, theaters, circuses, etc., and a great variety of stamp taxes on checks, bonds, and other documents, and on proprietary medicines.

CHAPTER XII

MONEY AND BANKING

Functions of Money. — No man by himself produces everything which he uses. Each devotes his time to the production of some few things, or the performance of some specific service, and exchanges his productions or services for things made by other men, or for services rendered by them. In rude stages of society this is done by a direct exchange of one commodity for another, as, for example, so much wheat or corn for a sheep or a plow. This is a very imperfect and cumbersome method of exchange which can obviously be employed only when the exchanges are not at all numerous or complicated. For this reason there early arose the use of money, or the practice of referring the value of all things to some one standard, usually the precious metals; so that, instead of trading, say twenty bushels of corn for a plow, where it would be necessary in each case to find a man who had a plow which he wanted to dispose of, and at the same time wanted wheat, the wheat could be sold for money, and this money used to buy a plow or anything else which might be desired.

Money is thus a “medium of exchange.”

But money serves also another and almost as impor-

tant a function as that of simplifying exchanges. It acts as a "standard of value" for deferred payments. Let us see what this means. There may be different kinds of money — gold, silver, nickel, copper, and paper — circulating in the same community. But their value, that is, their purchasing power, is all measured by the value of some one of them. This one is gold in some countries, and silver in others. In our own country all of our money, of whatever form or substance, represents so many dollars or parts of dollars, and the value of each dollar is measured by that amount of gold which is contained in each gold dollar. Therefore, at present, in our country, the value of all wealth is measured by the number of gold dollars it is worth, in the same way that an amount of water is measured by the number of quarts it contains, or a bin of wheat by the number of times it will fill a bushel measure.

Now when a man borrows a certain number of dollars from another man, and promises to repay them at the end of a year, or of five or ten years, each one of these dollars has a certain purchasing power, and, inasmuch as the price of commodities (that is, their value measured in dollars) is mainly determined by the amount of effort expended in their production, the whole amount borrowed represents a value which requires a determinate amount of labor of a certain degree of skill for its production. If, then, justice is to be done, it would seem that at the end of the year or the years at which the amount is to be repaid by the borrower, the amount of money repaid should represent the same amount of labor that it did when borrowed.

In estimating the cost of production of a commodity, it need hardly be said that not only the amount of labor actually expended in its manufacture, but the amount of capital necessarily involved, should be considered. For it is but just that a certain compensation be paid for the use of this capital in the same way that interest is paid for the use of borrowed money. Just as one pays a certain amount for the use of a farm or of a horse, so it is but fair that he should pay it for money, which represents, and may be immediately used for the purchase of a farm or a horse or any other commodity. This rent of money is termed interest.

When money is borrowed, the same number of dollars must be returned as were originally received. If the transaction is to be rendered perfectly fair, the value of each dollar should vary, from time to time, as little as possible. Therefore in determining the metal in which the value of the dollar is to be measured, we should seek to find through experience the one which fluctuates the least in value from year to year. Among most of the civilized nations this metal is believed to be gold, and a certain amount of it is therefore made the unit of value, and thus serves as the standard of value for deferred payments.

Although the value of gold may be as stable as that of any other commodity which could be selected, yet it is by no means perfectly stable, and has, in fact, varied not a little within modern times. The purchasing power of money is influenced not only by the difficulty with which the metal, which is the measure of value, is produced, but far more seriously by the amount of it in

circulation as compared with the amount of work which it has to do ; that is, with the number and size of the exchanges to be made through its medium. The more money there is in circulation, the less will be the value of each dollar, and, therefore, the higher will be the prices ; for if each dollar is worth less, it will take a larger number of them to represent a given value. When money is plentiful, therefore, prices are high ; and when it is scarce, prices are low. If, then, between the time of borrowing a certain sum and repaying it, prices have fallen, the amount repaid will represent a greater amount of goods than it did when borrowed. If prices have risen, it will represent a less amount. In the former case the creditor would seem to gain the advantage by receiving a greater value than he originally parted with ; while in the latter case the debtor would reap the advantage.

Within recent years prices in general have undoubtedly fallen. For this reason it has been thought by many that the increase in the supply of money has not kept pace with the growth of the country's population and business, and that thus money has become relatively less plentiful as compared with the work to be done by it. As a consequence, it is held that those who contracted debts in former years, when each dollar was less valuable, are now oppressed by having their debts proportionately increased by the increase in the value of the dollars in which such debts are measured. This has been the ground upon which there has been based a widespread demand that our stock of money should be increased by the free coinage of silver ; that is, that

a law should be passed permitting all owners of silver to bring it to the United States mints and have it coined into dollars, each of which should contain in weight sixteen times as much silver as there is gold in the gold dollar.

Those who advocate this measure are not deterred by the fact that the present market value of silver, as measured in gold, is not more than half as much as this. They say that if the United States Government should declare that sixteen ounces of silver must everywhere be received as equivalent in value to one ounce of gold in the payment of all debts, public and private, this declaration would be sufficient to make it so. This involves the attaching of the legal-tender quality to all silver dollars so coined. A piece of money is said to be legal tender when there is a law to the effect that it shall be receivable by all persons at its face value in full payment of all debts. If, then, say the advocates of free silver, this quality be attached by law to silver dollars, they will necessarily have the same value as gold dollars, and the currency, being increased by the coinage of the large amount of silver now in existence, prices will be proportionately raised, and the debtor class correspondingly relieved from the burdens which the alleged appreciation of gold has laid upon them.

On the other hand, those who oppose this policy deny in the first place the alleged justice upon which it is founded, for they say that the fall in prices of goods has been almost wholly, if not entirely, due to improved methods of production, and that, in fact, whatever amount of goods a dollar may now represent as com-

pared with its purchasing power ten or twenty years ago, that amount of goods may now be produced at a less expenditure of labor and investment of capital than then. In effect, they say, that though the debtor may have to return to the creditor a larger amount of goods, he does not have to return to him that which represents so large an amount of work.

In the second place, they believe that the free coinage of silver would be disastrous financially and commercially; that it would lead to a sudden and great increase in money, which would so change prices as to upset all business calculations and produce a financial crisis; that all foreign countries would send to us their silver and take away in exchange our gold, and that thus with no gold in circulation we should be placed upon a silver basis, in which condition we should be at a disadvantage in our commercial dealings with other leading nations which are upon a gold basis.

The whole question as to the coinage of silver is an exceedingly complicated one, the considerations here referred to being only the main issues involved. In the presidential election of 1896 this was the fundamental point at issue, and was decided adversely to the free silver party.

Paper Money. — Paper money, as its name imports, is a currency consisting of paper slips. These are, in fact, promissory notes of the parties by whom issued, and their value depends upon the security upon which they are based. When issued by a state, their value thus depends upon our faith in the honesty, stability, and financial capacity of the government of that state.

In some cases every dollar represented by the paper money issued by a government is secured by an equal amount of gold or silver deposited in the treasury to be paid upon demand to any party presenting such paper money for redemption. In such cases the paper is exactly as good as the coin, and the government issues it only because of the greater convenience with which large sums may be handled in paper than in coin.

Very frequently, however, a government, when in urgent need of money, issues paper money which it stamps with a legal-tender quality, for the redemption of which it does not deposit an equivalent amount of gold or silver. The issuance of such a currency is, in effect, a forced loan from the people, inasmuch as the law compels them to receive it as a legal tender, and it is not redeemable on demand in coin. For this reason it is also termed "fiat money," since it rests upon the mere fiat or will of the state, and not upon any substantial value. Money of this character was issued by the United States Government during the Civil War, and some of it is still in circulation.

In the following description of the different kinds of money in the United States, it will be seen that we have in circulation several forms of paper money.

Different Forms of United States Money.— In the United States, as in most nations, the creation of money has always been under the control of the government, and the government alone, so that one certain fixed system should prevail. For the sake of convenience money is made of various kinds and denominations, and

United States money may conveniently be regarded under the five following divisions:

1. *Gold Coin, Gold Bullion, and Gold Certificates.* — There are six gold coins: (1) the eagle, \$10 piece; (2) the double eagle, \$20 piece; (3) the half eagle, \$5; (4) the quarter eagle, \$2.50; (5) the \$3 piece; and (6) the \$1 piece. The last three are but little used, and are no longer coined. The gold bullion, or gold in bars and bricks uncoined, is for all practicable purposes as good as the coin, and in foreign trade is much used, it being more convenient to handle. Besides the gold coin and bullion, there are in circulation gold certificates. These are of paper, the same in general appearance as the ordinary bank note, and certify that an equivalent amount of gold has been deposited with the Treasurer of the United States, and that the holder of the certificate has the right to obtain the gold for it at any time. This does not increase the amount of money in circulation, as for every bill so issued just so much coin is withdrawn and stowed away in the Treasury. The certificates are used simply for convenience, and in order to avoid the wear of the coin if in constant use. These certificates are of the denomination of \$20.

2. *Silver Dollars and Silver Certificates.* — There is no silver bullion circulating as money, for a silver dollar does not contain a dollar's worth of silver, as the gold dollar does of gold, and the silver bullion is thus of different value (less value), according to weight, than the silver dollar. The silver certificates are similar to the gold certificates, and certify that an equivalent amount of silver coin has been deposited in the Treasury.

3. *Subsidiary and Minor Coins.*—All coins of a lower denomination than \$1 belong to one or the other of these two classes. There are three subsidiary coins: The fifty-cent, the twenty-five-cent, and the ten-cent pieces. The three-cent piece is no longer coined. All other coins are minor coins. The peculiarity of the subsidiary and minor coins is that they are, as compared with the standard coins (gold and silver dollars), of a much greater face value than the value of the metal they contain. The subsidiary coins are legal tender to the amount of \$10, the minor coins to the extent of twenty-five cents. Gold coin and the silver dollars are legal tender to any amount.

4. *Treasury Notes.*—Under this head is included that form of money ordinarily known as “greenbacks,” from the color of the paper used. These notes were originally issued during the Civil War, and are promissory notes on the part of the United States Government, and as such constitute a portion of the debt of the government. At first they were not redeemable, *i.e.*, exchangeable for coin at the Treasury, but since 1879 they are, and therefore just as valuable now as any other form of money, though formerly worth much less than their face value. One hundred million dollars in gold is kept on deposit in the Treasury for their redemption. The amount outstanding (\$346,000,000) is kept constant, because as fast as redeemed in coin they are reissued.

By the Silver Bill of July 4, 1890, provision was made for a new kind of treasury notes. By this act the Secretary of the Treasury was directed to purchase

silver bullion to the amount of 4,500,000 ounces each month, and to issue in payment for such purchases treasury notes. These notes so issued were to be redeemable on demand in coin and to be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated. This law was repealed in 1893. The war revenue act of Congress passed June, 1898, provided for the coinage of about \$40,000,000 of silver at the rate of \$1,500,000 monthly, from certain bullion now in the Treasury. Except for the above, no silver dollars are now being coined, and no silver bullion is being purchased at the Treasury.

5. *Notes of National Banks.* — This is the one form of money that is not issued directly by the federal government, but through the agency of what is called our "National Banking System," which may be thus described. Under an act of Congress, banks may be organized in any place, which, upon conforming to certain regulations as to methods of operation and federal rights of supervision and examination of their books, are permitted to issue circulating notes. The minimum capital stock required varies from \$50,000 to \$200,000, according to the population of the city where the bank is located. One third of the capital must be invested in government bonds and deposited in the United States Treasury. The bank may then issue notes to the extent of ninety per cent. of such deposit. Such notes are thus amply secured by the deposits with the government. The government guarantees their payment, and they therefore circulate as well as the certificates issued directly by the government.

Thus a great deal of the paper money in circulation is issued by the national banks; this must, on demand, be redeemed with coin and, in case of failure of the banks, is paid by the government which reimburses itself from the deposits. A bank note differs from a treasury note in two particulars. The treasury note is a promise of the government, and is a legal tender in payment of all private debts; the bank note is the promise of a private company, and is not legal tender. A bank note is said to be paid when the bank gives a greenback or coin for it. A greenback is said to be paid or redeemed when the government gives gold for it.

The following figures taken from the report of the Secretary of the Treasury for 1897 show the amounts of the various sorts of money just described, which on July 1, 1897, were in the Treasury, in the banks, and in the hands of the people:

Gold coin and gold bullion	\$696,239,016
Silver coin and silver bullion	556,590,184
U. S. Treasury notes	461,548,296
National bank notes	230,668,034
Subsidiary coins	75,818,369

It will be noticed that gold and silver certificates are not included, for, as explained, they merely represent an equal amount of coin or bullion on deposit.

The total amount of money is thus approximately \$2,021,000,000, which, divided by the total population (72,937,000), gives about twenty-seven dollars per capita. It should be borne in mind in connection with these figures that other devices, such as checks, drafts, bills of exchange, and other forms of credit, are used side by

side with money in carrying on trade and commerce. Of these we shall speak presently.

Banking. — Banks perform several very important functions in our commercial and financial life, of which the one which probably first occurs to most of us — the provision of a place for the safe deposit of money — is the least important. Besides this function they perform the important office of providing the means through which the business men of the country are enabled to obtain the use of money in proportion to their credit. In the conduct of all commercial affairs of any considerable magnitude frequent occasions arise for the temporary use of sums of ready money greater than those which business men ordinarily keep on hand. Business men do not care to keep on hand any greater amount of cash than is positively necessary, for while their wealth is in that form it is unproductive. When, therefore, occasional demands for an exceptional amount of cash occur, there is needed some source whence it can be obtained by a pledge of credit. The banks furnish such a source.

The money loaned by the bank is derived from its invested capital, and the sums intrusted to its keeping by its depositors. When a bank lends upon insufficient security, and is unable to collect its loans, and these sums amount to any considerable figure, the bank finds itself unable to repay to its depositors the amounts of their deposits, and is then said to fail or to close its doors.

When a suspicion becomes current that a bank is in an unsound condition, all of its depositors are naturally eager to withdraw their deposits as soon as possible.

This constitutes what is known as a run on the bank, which often forces it to close its doors, because it has not enough ready money on hand, although it may have plenty of assets and could easily pay all its liabilities if given sufficient time to realize upon them. In the ordinary course of events a bank does not anticipate on any one day withdrawal of more than a certain percentage of its deposits. It therefore does not keep on hand more cash than will be necessary to meet this ordinary demand.

Besides furnishing a place of safe deposit and a medium through which merchants and manufacturers may obtain temporary loans, banks perform the extremely useful service of providing a convenient method through which payments may be made. All persons doing any considerable amount of buying and selling keep deposits at some bank, and in making payments are thus able, instead of handing over the money, simply to give checks, which are orders to the banks at which they have their money deposited to pay the specified amounts to the specified persons, and charge to the accounts of the drawers of the checks. The person to whom a check is given may take it to the bank upon which it is drawn and obtain the money called for by it, or, what is more usual, if he has an account of his own at another bank, he will deposit it there to his own credit, and his bank will collect it from the bank upon which it is drawn. In large cities, however, these checks are not sent directly to the banks upon which they are drawn, but to an institution termed the clearing house. Here each bank daily brings the checks of

other banks which it has honored the previous day. These are given to the clearing house officials, and they, by a simple process of addition and subtraction, determine in each case whether a bank has thus paid out or given credit for an aggregate sum drawn upon the other banks of a greater or less amount than they on their part have altogether honored of its checks. If greater, a clearing house check for the difference is given to the bank; if less, the bank gives its check for the balance to the clearing house. In this way accounts amounting to hundreds of millions of dollars in some cases are settled in an hour's time.

Thus a very large proportion of the business of the country—nine tenths of the whole in some of the large cities—is carried on by means of these checks or similar instruments of credit. In this way less work is left for money to perform, and in estimating, therefore, the amount of money needed in a given community, not only its population and business have to be considered, but the extent to which instruments of credit are used.

Since the ideal form of money is that which will increase in amount in exact proportion to the increase of work to be performed by it, and decrease with the decrease of such work, it is thought by very many that while the state should fix the standard of value, that is, the amount of gold or silver to be contained in the dollar, the banks should have the power of issuing money, since the demand for money made by merchants upon the banks will depend in large measure upon the extent of their business operations, and thus the amount of money issued will adjust itself automatically to the need

and demand for it. Prices will thus tend to remain fixed, except in so far as modified by cheapened modes of production. At the same time, if such a system of bank currency were ever adopted, the most stringent conditions would have to be established for its regulation. It would be necessary to forbid the banks to issue their paper money except when ample securities were deposited, such as bonds, etc., to make it practically certain that there would be no danger of the money failing of redemption when its face value in coin were demanded. At one time our state banks were permitted to issue paper money without being obliged to deposit such securities, with a result that many of them issued amounts of notes far beyond what they were able to redeem, and thus entailed losses upon their holders, and in general threw financial matters into confusion. If these banks are ever again allowed to issue paper money, regulations must be made to prevent a repetition of this evil.

The part played by credit in our commercial and industrial life explains why it is that at times countries are subject to extraordinarily severe financial disturbances, termed crises or panics.

For some reason, as the failure of some great business concern, the outbreak of a war, a sudden change in the financial policy of a government, undue speculation, an unexpected increase or decrease in the supply of money, or any one or more of an almost countless number of other causes, there may begin to spread a suspicion of financial troubles to come, or a doubt as to the financial standing of some of the leading busi-

ness concerns of the country. Immediately every one attempts to strengthen his position, just as the sailors of a ship take in sail at the prospect of a storm. Those who have money owing to them begin to press their debtors for its payment; while those who would ordinarily lend, feel unwilling to do so. Thus the suspicion destroys in two ways the ability of credit to perform its ordinary work in the conduct of business. It renders lenders unwilling to lend, and those who have already lent eager to collect. Debtors, being pushed for payment, first of all exhaust their bank deposits and then attempt to borrow from the banks. But these institutions, with their deposits lessened, are not only less able to lend, but, owing to the general feeling of distrust, unwilling to part with that money which they have. Thus merchants, one after another, though possessing, it may be, large amounts of property, are unable to pay the debts which they have contracted and are obliged to assign. Their failure of course affects their creditors in turn, and thus the trouble spreads. The root and cause of the whole panic has been distrust, which has rendered credit unable to perform its wonted functions, and business does not regain its ordinary condition until confidence is restored — a process usually of slow growth.

CHAPTER XIII

PARTY GOVERNMENT AND MACHINERY

Why Parties are Formed. — In any popular government political parties are a necessity. Upon many of the great questions of public policy which arise it is impossible that all persons should think alike. Not only are their interests widely different, but their education and their dispositions are not the same. Certain individuals by their natures and habits of mind are opposed to change or to radical or extreme action of any sort. They are, in short, naturally conservative. Others are equally inclined to favor new experiments and to rejoice in change, and to be optimistic of the results to be obtained from any new condition of affairs. Again, some believe in using the power of government to its fullest extent, in the exercise of what we have termed its non-essential functions; while others are opposed on principle to any extension of the state's activities beyond what is absolutely necessary for the preservation of national independence and domestic order. When to these influences we add that of self-interest, it becomes evident that where the right of participating in public affairs is widely extended, opposing political parties will be formed. Self-interest ought not, of course, to cause a man to advocate a public policy

contrary to that which his judgment tells him will be best for the common welfare; but as men are imperfect, this influence is, as a matter of fact, a most powerful one. It is this that causes political parties so often to be sectional in character, that explains why the chief strength of the protectionist party lies in one part of our country and of the free trade party in another part; why the free silver party is all-powerful in the West and South, while its opponents are overwhelmingly strong in the Middle and Eastern states?

Benefits of Parties. — The benefits to be derived from the existence of political parties are the following:

In the first place, their existence tends to keep the policies and administration of the government under a constant surveillance. On the one hand, the party out of power is naturally anxious to discover and make public any errors or instances of corruption which it can discover in the operations of its opponents. On the other hand, the party in power is equally eager to maintain the confidence which the people have in it by avoiding errors and evidences of corruption. This is, and should be, the normal working of party government—one in which there is a healthy emulation between parties to merit and secure the confidence and support of the public by the wisdom of its proposal and the probity and honesty of its administration. And this is what its working always would be, were all citizens, or a majority of them, alert in their own interests, and intelligent to discover whether a party's promises are wise and honestly fulfilled. In the absence, however, of this intelligent and widespread interest, the

contest between parties degenerates into a mere struggle for the possession of public offices for the sake of the salaries which they yield or the opportunities which they give for exploiting the public treasury. Thus arises a class of so-called professional politicians, who make the direction and control of political matters a business, and who are actuated solely by selfish interests.

Certain individuals, by means of their wealth or their organizing abilities, obtain control of party organizations, and by bribery, by promises of office, by threats of blackmail, etc., obtain a following sufficient to outvote the small proportion of citizens who take sufficient interest actively to oppose them.

Functions of Parties.—The three functions which political parties perform, whether for good or for bad, are: the formulation or crystallization of public opinion, and its reduction to definite statement in party platforms; the selection of candidates for elective positions; and the management of political campaigns.

In the formation and crystallization of public opinion numerous means are used, such as publication of arguments in the newspapers, the distribution of political pamphlets, the formation of political clubs, public speaking and the like. The final statement of a party's principles is given in its platform as adopted in convention, a fact to which we shall presently refer.

The selection and nomination of persons for election to public offices is made through a series of meetings and organizations which we shall describe under the title of "Party Machinery."

The third function of political parties, that of organizing and conducting political campaigns, consists in arousing enthusiasm at election time, and seeing that all members go to the polls. In order to arouse enthusiasm, political literature is distributed broadcast, stump speeches are given in every place of importance, and bonfires, torchlight processions, pole-raising, and other celebrations are provided. Previous to the election, every member of the party is seen and induced, if possible, to cast his vote in the way desired, and to influence others to do the same. Upon the day of election care is taken that sufficient ballots are provided and distributed at convenient points, that intimidation or bribery by the other party is prevented, and that those unable to walk to the polls are provided with conveyance thither.

Party Machinery. — The success of a political party at the polls is largely dependent upon its being able to achieve the following results: *First*, to secure a substantial agreement between its members as to the main line of public policies to be advocated; *second*, to obtain the concentration of its votes upon some one candidate for each office to be filled; *third*, to provide agencies through which systematic efforts can be made to retain the allegiance of its members, and to obtain new recruits either from the opposing party or from among those young men who are just reaching the voting age; *fourth*, to afford some instrumentality through which political campaigns may be conducted.

For the performance of the above-mentioned functions, organization is necessary; and thus it is that throughout the country, in all the states, counties, cities,

and even in the smaller subdivisions of wards and voting precincts, we find parties thoroughly organized under acknowledged leaders, and yielding obedience to definite systems of rules. This party government or "machine," as it is popularly called, rests upon no law or constitution, but is a result of the voluntary action of the voters themselves. Each party has its own machine, in the control of which no one outside of its own ranks can participate. Though entirely distinct from each other, these party machines are all substantially alike, both as to form of organization and methods of control, and hence a description of one is a description of them all.

In general the organs of a political party are of two kinds: *First*, executive committees; and, *second*, nominating conventions. In every electoral district, whether it be a state, a city, a county or a city ward, one such committee and convention is provided by each party to look after its interests, and to select its nominees.

The committees are in existence all the year round, and their duties consist in the management of campaigns, in issuing the call for the assembling of the nominating conventions, and in performing all matters preliminary to the meeting of such conventions.

The conventions are called only just before an election is to occur, and they go out of existence as soon as their work is done. To them fall the duties of preparing and adopting the party platforms, and of selecting the candidates for whom the members of their party are to cast their votes. They also appoint the committee which is to manage the party's affairs until the next election, and to issue the call for the next convention.

In these conventions, also, are selected delegates when necessary, to represent the party in the larger conventions in the larger districts. That is, the county convention selects delegates to the state convention, and the state convention selects delegates to the National Convention.

Owing to the fact that we live under a federal government, we have state and local, as well as national political parties, and the organization of each of these is more or less distinct.

Town and Township Party Organization. — In those parts of the country where township government prevails, candidates for local offices are usually nominated in annual town meetings, though, where there is any contest for any particular office or offices, the candidates either announce themselves or are nominated at private meetings attended by the leading members of the community. Outside of New England, however, it is usual in the towns and villages for the members of each political party to come together in one assembly for the selection of their candidates. These meetings of party voters are termed caucuses or primaries. The word "primary" is, however, the more definite term, as the word "caucus" has, as we shall see, other uses. As a rule, party lines are not drawn very distinctly in these small local units.

Party Organization in Cities. — In the cities, party lines are apt to be drawn more closely. Each city is divided into wards, and each ward into voting precincts. In each of these wards there exists a permanent committee, which calls together ward caucuses or conven-

tions in which are selected the delegates for the larger convention which is to represent the whole city. In the city convention are nominated the party candidates for municipal offices, such as the Mayor, Treasurer, Chief of Police, Solicitor, Auditor, etc.

In some cities, however, the system of "Primary Elections" prevails, in which case each party holds an election preliminary to the regular one at which each voter casts his vote directly for the man whom he desires to have nominated, and the one receiving the greatest number of votes is declared to be the party's nominee, to be voted for at the regular election by all its members. Where one party has a decided majority of voters in the city, success at the primary is practically equivalent to election, though the legal form of an election must be pursued on election day.

Where aldermen are elected by districts or wards, they are usually nominated in district or ward conventions. Each party sees to it that no one shall attend or participate in its caucuses or primaries except its own members, and for this purpose it keeps a list of all voters who belong to its ranks. The call for a city caucus or primary is issued by the city committee, which is usually composed of members of the ward committees or of delegates from them. In theory, these committees have nothing to do with nominating candidates, but in fact they often arrange before the meeting of the convention a "slate," as it is called, or list of those whom they desire to nominate; and aided by the indifference of the rank and file of the voters, they frequently succeed in getting their lists accepted.

Party Organization in the Counties. — Candidates for county officers are nominated in county conventions which are called by county committees, and composed of delegates selected in conventions of the towns or cities within the county. Besides nominating the county candidates, the convention selects delegates to the state convention, if one is soon to be held, and appoints a county committee which is to sit during the ensuing year and call the next convention.

State Party Organization. — The officers usually voted for at state elections are the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor, Attorney General, Superintendent of Education, Surveyor, and Judges of the highest state court. Candidates for all these positions are selected in a state convention called by the State Central Committee and composed of the delegates chosen in the county conventions, or, sometimes, of delegates elected directly in primaries in the towns and cities.

For the election of members of the state legislatures, the states are divided into senatorial and representative or assembly districts, and in each of these districts nominating conventions are held. In some cases the counties are taken as the basis of apportionment, each county being entitled to a certain number of state Senators and Representatives. In other cases the state is divided into special districts for this purpose.

Organization of National Parties. — The only federal officials whose offices are elective are the President and Vice President and members of Congress. The national organization for selecting candidates for the President

and Vice President and for conducting national campaigns consists of a National Central Committee and a National Nominating Convention. The committee consists of one delegate from each state. Its duties are similar to those of other committees, and consist in the management of the campaign and the issuance of the call for the National Convention. The State Central Committee of the party in each state is officially notified when this call is made, and thereupon summons a state convention for choosing four delegates at large to be sent to the National Convention, and also notifies the committees in the different congressional districts of the state. These summon congressional district conventions, each of which selects two delegates for the National Convention, besides the alternates, who are to take the place of the regular delegates in case for any reason any of them are unable to serve. In some states the Democrats select all the delegates to the National Convention in state conventions. If a state election is about to occur, the state officers are nominated and the presidential electors and delegates to the National Convention are selected at the same time. If not, a special state convention is called. The members of the state and congressional district conventions are usually chosen at primaries in the different cities and towns.

National Conventions. — The plan for nominating candidates for President and Vice President was not introduced for many years after the adoption of our present Constitution. In the presidential elections of 1789 and 1792 there was no necessity for regular party nominations, as the whole people were practically unan-

imous in favor of George Washington. Likewise in 1796 it was so well understood that Adams was the man desired by the Federalists, and Jefferson by the Democrats, that formal nominations were not required. But, commencing with 1800, political parties were more divided in their choice, and some method was demanded by which it might be decided on whom the party should unite. From 1800 to 1820 this demand was met by nominations made by Congressmen, in caucuses, or private meetings of the members of each party. This method finally proved unsatisfactory to the country, but from 1824 to 1835 no new and better method was invented, and nominations were made rather irregularly, each state legislature proposing the name of its favorite. This method of nomination naturally failed to unite the voters of the party in all the states on one man, and had to be abandoned. After a failure to revive nominations for President by congressional caucuses, the present method was developed and adopted. The introduction of this last plan may fairly be said to date from 1840. National Conventions were first held in eastern cities, but are now held further west, to accommodate the shifting center of population, Chicago being the favorite city.

The National Convention is composed of delegates from all the states. Each state sends twice as many delegates as it has representatives in the National Senate and House of Representatives, thus making a total now of eight hundred and ninety-two. In addition to these, the Republicans allow two delegates from each of the territories.

Method of Procedure. — As soon as the state and territorial delegations arrive in the city, each elects a member for the next National Central Committee, from which is chosen an executive committee, which does all the work of conducting the campaign. The members of this committee are usually men of wealth, who contribute liberally to the campaign fund.

The business of the National Convention is commenced by the chairman of the National Central Committee calling the convention to order. A temporary chairman is chosen, who appoints a "committee on credentials," whose duty it is to decide which delegation shall be admitted in case two are sent from the same state, both claiming admittance as representing the party in that state. A "committee on resolutions" is also organized to prepare the party platform. The next day the permanent chairman is appointed. The platform is then read and adopted, or amended and adopted. There is then an alphabetical roll call of the states, and names are proposed and seconded for nomination as candidates for President. The average number of names proposed is seven or eight, though sometimes as many as twelve have been suggested. As each man is proposed the delegate presenting his name extols him in a laudatory speech, and gives reasons why his man will make a strong candidate and an able President. Voting then commences. Each delegate has one vote. In the Republican convention a majority of the whole number of the delegates voting for one man is required before a nomination is reached, while the Democrats require a two-thirds vote. Some-

times a nomination is made on the first ballot, while at other times as many as fifty-three ballots have been required, as was the case when the Whigs nominated Scott. Forty-nine ballots were needed when Pierce was nominated by the Democrats. In 1888 Cleveland was nominated by the Democrats by acclamation, no vote being necessary to show the wishes of the delegates. Benjamin Harrison was nominated by the Republicans on the eighth ballot.

A candidate for President having been selected, a Vice President is nominated in a similar manner, though generally with much less trouble. After the appointment of a new National Committee to serve for the next four years, the work of the convention is ended.

The candidates are now set before the people by their respective parties. The people do not vote directly for them, but, what amounts to the same thing, vote for electors who are pledged to vote for them. A vigorous campaign of four months follows until election day in the first week of November. Each candidate, a short time after his nomination, is expected to publish a letter of acceptance in which he expresses his full confidence and belief in the platform which his party has adopted, and outlines somewhat more fully his own views, and his future policy if elected.

Presidential electors are usually chosen, two from each congressional district, in district convention, and four at large in each state convention, though in some few states all of the electors are chosen in state convention.

Congressional Elections. — For the election of members to the United States House of Representatives,

each state is divided into as many so-called congressional districts as it is entitled to representatives, and in each of these districts a candidate is selected in a convention composed of delegates chosen at caucuses or primaries in the various towns and cities of the district. Call for this convention is issued by the Congressional District Committee. In those years in which a presidential election occurs, these district conventions also select, except in a few states, candidates for presidential electors and delegates to the National Convention.

Legislative Caucuses. — Each House of every legislative body, state and national, has the selection of certain of its own officers, such as the Speaker, Chaplain, Secretary. These are elected by a majority vote of the members, and for the selection of those whom each party is to support, caucuses of the members of each party are held. Similar caucuses are also often held, as has been before said, to decide upon the line of conduct to be pursued by a party in legislative proposals which are expected to come up for consideration. The state legislatures have also the important duty of electing United States Senators. Here, too, the caucus method of nomination is pursued.

The introduction of the Australian ballot system has changed in some places the methods of nomination which have been described in this chapter. Under this system local candidates may be put in nomination by filing with the proper officer a paper signed by a specified number of voters asking that this be done. This method, however, is seldom used by the larger political parties, but only by the smaller independent factions.

In closing this account of our party organizations and their operation, emphasis should again be laid on the absolute duty of every citizen to consider his citizenship a public office, and the benefits which he derives from his life in the state as creating an obligation on his part to lend honest assistance toward rendering the political life of his community as high and as pure as possible. This means his active, intelligent, and disinterested participation in the political affairs of his country. As far as possible he is to coöperate with that party which he honestly considers to represent the best public policies, for in such coöperation his efforts will yield the greatest fruit. But where there is no party to which he can conscientiously give his allegiance, independence in politics is his duty.

It is an unfortunate fact that our citizens are more apt to take a lively interest in national politics than in local affairs; whereas the latter are far more important to them personally, and, in the aggregate, to the country at large. It is beyond question that the primaries or caucuses in the small local subdivisions constitute the most important element in our political machinery. Hence, it is in them that honest and intelligent voters should, above all, participate. If these are properly conducted, not only will the proper local candidates be selected and a good tone be given to local politics, but the proper delegates will be sent to the conventions in the larger districts, and thus the good influence will extend to the state and to the nation.

CONSTITUTION OF THE UNITED STATES—1787¹

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. 1 The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2 No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3 Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.² The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be

¹ This reprint of the Constitution exactly follows the text of that in the Department of State at Washington, save in the spelling of a few words.

² Superseded by the 14th Amendment. (See p. 325.)

entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4 When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5 The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3. 1 The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years; and each senator shall have one vote.

2 Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3 No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4 The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5 The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6 The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7 Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. 1 The times, places, and manner of holding elections for

senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2 The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. 1 Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2 Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3 Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

4 Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. 1 The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2 No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7. 1 All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2 Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall

return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3 Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. 1 The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2 To borrow money on the credit of the United States;

3 To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4 To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5 To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6 To provide for the punishment of counterfeiting the securities and current coin of the United States;

7 To establish post offices and post roads;

8 To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9 To constitute tribunals inferior to the Supreme Court;

10 To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11 To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12 To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;

13 To provide and maintain a navy ;

14 To make rules for the government and regulation of the land and naval forces ;

15 To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;

16 To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;

17 To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States,¹ and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings ; and

18 To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. 1 The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.²

2 The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3 No bill of attainder or *ex post facto* law shall be passed.

4 No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5 No tax or duty shall be laid on articles exported from any State.

6 No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another : nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

¹ The District of Columbia, which comes under these regulations, had not then been erected.

² See also Article V, p. 320.

7 No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8 No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION 10.¹ 1 No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make anything but gold and silver coin a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2 No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws : and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress.

3 No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECTION 1. 1 The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows

2 Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress : but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government of the

¹ See also the 10th Amendment, p. 323.

United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.¹

3 The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4 No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5 In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6 The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7 Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and

¹ Superseded by the 12th Amendment. (See p. 324.)

will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. 1 The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2 He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3 The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SECTION 2. 1 The judicial power shall extend to all cases, in law and

equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; — to all cases affecting ambassadors, other public ministers and consuls ; — to all cases of admiralty and maritime jurisdiction ; — to controversies to which the United States shall be a party ; — to controversies between two or more States ; — between a State and citizens of another State ;¹ — between citizens of different States, — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2 In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make.

3 The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the State where the said crimes shall have been committed ; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. 1 Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2 The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. 1 The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2 A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

¹ See the 11th Amendment, p. 324.

3 No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. 1 New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the jurisdiction of any other State ; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2 The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion ; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1 All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2 This Constitution, and the laws of the United States which shall be made in pursuance thereof ; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the

land ; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3 The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States, and of the several States, shall be bound by oath or affirmation to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.¹

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names,

Go : WASHINGTON —

Presidt. and Deputy from Virginia

New Hampshire

John Langdon
Nicholas Gilman

Wm. Paterson
Jona : Dayton

Pennsylvania

Massachusetts
Nathaniel Gorham
Rufus King

B. Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. Fitzsimons
Jared Ingersoll
James Wilson
Gouv Morris

Connecticut

Wm. Saml. Johnson
Roger Sherman

New York

Alexander Hamilton

Delaware

Geo : Read
Gunning Bedford Jun
John Dickinson
Richard Bassett
Jaco : Broom

New Jersey

Wil : Livingston
David Brearley

¹ After the Constitution had been adopted by the Convention it was ratified by conventions held in each of the states.

Maryland

James McHenry
 Dan of St. Thos Jenifer
 Danl. Carroll

Virginia

John Blair —
 James Madison Jr.

North Carolina

Wm. Blount
 Richd. Dobbs Spaight
 Hu Williamson.

South Carolina

J. Rutledge,
 Charles Cotesworth Pinckney
 Charles Pinckney
 Pierce Butler.

Georgia

William Few
 Abr Baldwin

Attest

WILLIAM JACKSON Secretary.

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

ARTICLE I¹

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by

¹ The first ten Amendments were adopted in 1791.

oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI¹

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII²

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate ;—The president of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted ; —The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President ; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

¹ Adopted in 1798.

² Adopted in 1804.

ARTICLE XIII¹

SECTION 1. 1 Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2 Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV²

1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property, without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

2 Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3 No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

4 The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

¹ Adopted in 1865.

² Adopted in 1868.

But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave ; but all such debts, obligations and claims shall be held illegal and void.

5 The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV¹

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

¹ Adopted in 1870.

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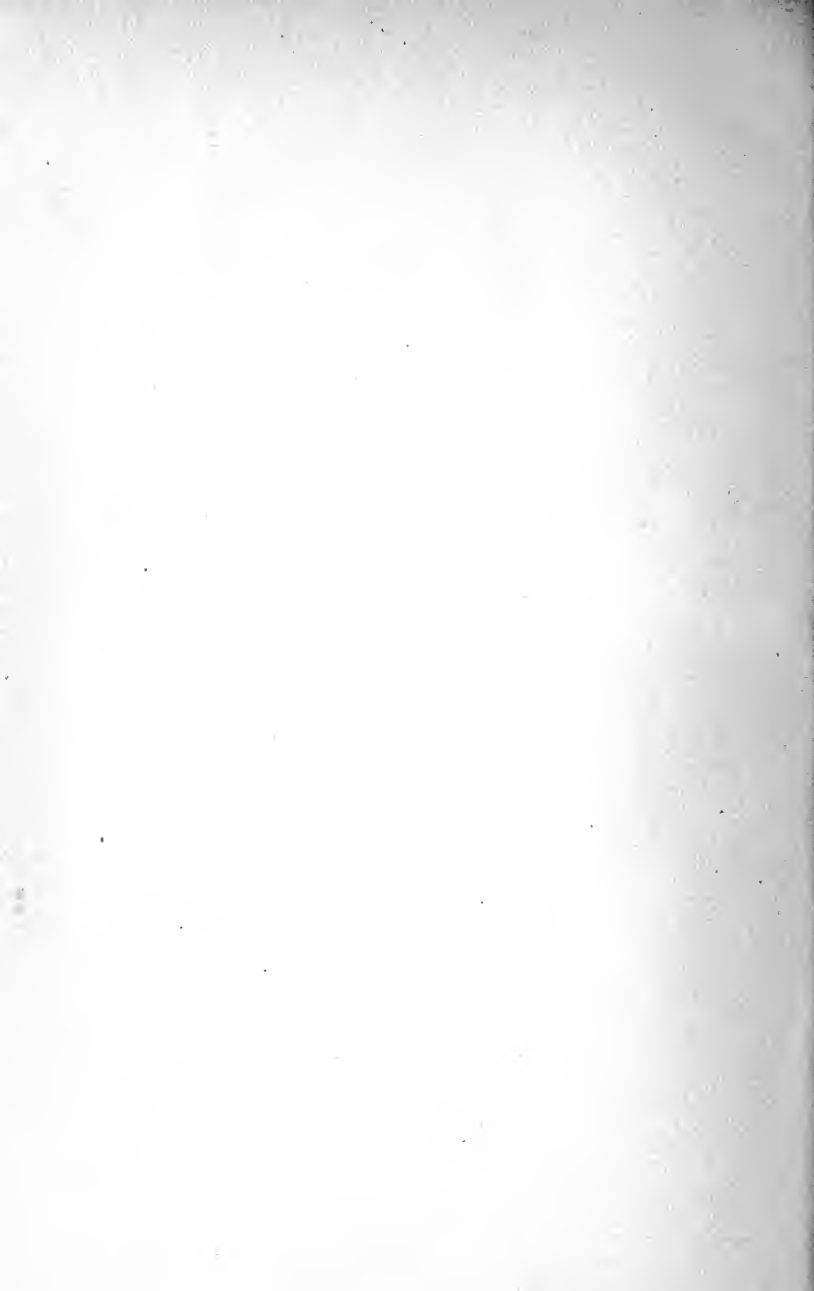
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